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A T T O R N E Y S

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(202) 466-6532

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RECORDATION NO. 16097-A FILED

JUL 23 '97

2-13 PM

July 23, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

I have enclosed two originals of the document described below, to be recorded pursuant to 49 U.S.C. § 11301.

The document is a Partial Release of Collateral, a secondary document, dated as of June 20, 1997. The primary document to which this is connected is recorded under Recordation No. 16097. We request that this document be recorded under Recordation No. 16097-A.

The names and addresses of the parties to the Partial Release of Collateral are:

Secured Party:

First Bank National Association
First Bank Place, P.O. Box A512
Minneapolis, MN 55480

Debtor:

Independent Locomotive Service, Inc.
21 Main Street
Bethel, MN 55005

A description of the equipment covered by the Partial Release of Collateral consists of one GP-10 diesel electric locomotive numbered ILSX 1360.

BALL JANIK LLP

Honorable Vernon A. Williams

July 23, 1997

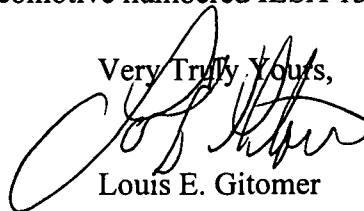
Page 2

A fee of \$24.00 is enclosed. Please return one original to:

Louis E. Gitomer
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005

A short summary of the document to appear in the index follows: a Partial Release of Collateral by First Bank National Association, First Bank Place, P.O. Box A512, Minneapolis, MN 55480, and Independent Locomotive Service, Inc., 21 Main Street, Bethel, MN 55005, covering one GP-10 diesel electric locomotive numbered ILSX 1360.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over the typed name.

Louis E. Gitomer

Enclosures

SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C. 20423-0001

OFFICE OF THE SECRETARY

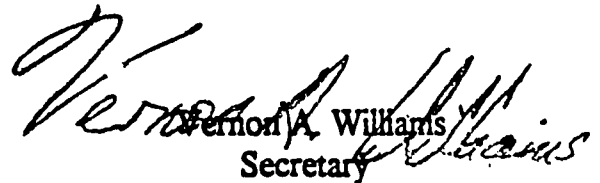
Louis E. Gitomer
Of Counsel
Ball Janik LLP
1455 F Street, NW., Ste. 225
Washington, DC., 20005

DATE: 7/23/97

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of 49 U.S.C. 11301
and 49 CFR 1177.3 (c), on 7/23/97 at 2:13PM, and
assigned recordation number(s). 20787, 15648-A, 16070-A, 16071-A and 16097-A.

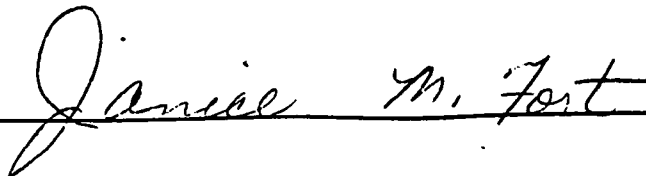
Sincerely Yours,

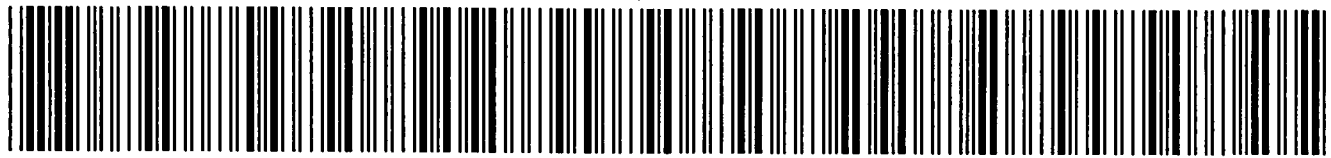

Vernon A. Williams
Secretary

Enclosure(s)

\$ 120.00 The amount indicated at the left has been received in payment of a fee in
connection with a document filed on the date shown. This receipt is issued for the amount paid.
In the event of an error or any questions concerning this fee, you will receive a notification after
the Surface Transportation Board has an opportunity to examine your document.

Signature





CoverSheetStart

Recordation Files

COVER SHEET START

DOT - STB Project

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

140 BROADWAY

NEW YORK 10005

1775 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
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101 PARK AVENUE, NEW YORK 10178
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TELEX: 961289 OR 12-6825
CABLE ALL OFFICES: DEWBALAW

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5355 TOWN CENTER ROAD
BOCA RATON, FLORIDA 33486
TELEPHONE: (407) 391-8399
TELECOPIER: (407) 391-8798

INTERSTATE COMMERCE COMMISSION

DEC 22 1988 2-1 5 PM No. 8-357A053
1 6098 DEC 22 1988
RECORDATION NO. 1425

Date December 22, 1988
Fee \$ 13.00

Ms. Noreta R. McGee ICC Washington, D. C.
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 1324
Washington, D.C.

Dear Secretary:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Purchase Agreement, a primary document, dated December 10, 1988.

The names and addresses of the parties to the document are as follows:

The Connecticut National Bank
777 Main Street
Hartford, Connecticut 06115

and

Massachusetts Bay Transportation
Authority
Transportation Building
Ten Park Plaza
Massachusetts 02116

and

DB Export-Leasing GmbH
Taunusanlage 12,
D-6000 Frankfurt am Main 1
Federal Republic of Germany

DEC 22 1988
11
1000

Ms. Noreta R. McGee
December 22, 1988
Page 2

and

NEMLC Leasing Corporation
28 State Street
Boston, Massachusetts 02109
Attn: Vice President - Administration


A description of the equipment covered by the document is attached as Annex A.

A fee of \$13.00 is enclosed. Please stamp and return the original not needed by the Commission for recordation to the undersigned.

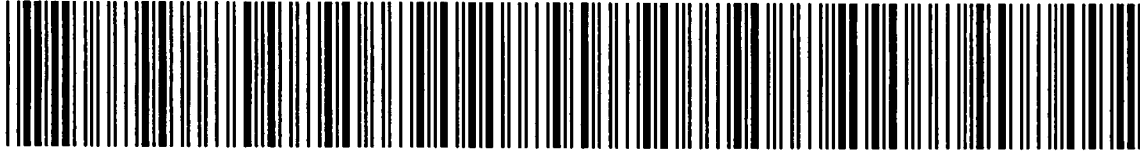
A short summary of the document to appear in the index follows:

Agreement to Purchase and Lease
between Massachusetts Bay Transportation
Authority, DB Export-Leasing GmbH
("DBX"), NEMLC Leasing Corporation and
The Connecticut National Bank, as Trustee
(the "Trustee"), dated as of December 10,
1988, pursuant to which a security
interest in 30 Messerschmitt-Boelkow-
Blohm Commuter Rail Coaches has been
granted to the Trustee by DBX to secure
the Trustee's power to sell such 30 rail
coaches.

Very truly yours,


E. Jane Wallace

Enclosures



CoverSheetEnd

Recordation Files

COVER SHEET END

DOT - STB Project

ANNEX A

Thirty (30) commuter rail coaches manufactured by Messerschmitt-Boelkow-Blohm GmbH as described below (the "Equipment"), together with all additions, attachments, accessions and substitutions to or for the Equipment and in any proceeds of the Equipment, and each having the A.A.R. Mechanical Designation of "PA":

Manufacturer's
Identification
Number

02-142
02-143
02-144
02-145
02-146
02-147
02-148
02-149
02-150
02-151
02-152
02-153
02-154
02-155
02-156

02-125
02-126
02-127
02-128
02-129
02-130
02-131
02-132
02-134
02-135
02-136
02-137
02-138
02-139
02-133

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

12/23/88

Stephen Older
Dewey Ballantine, Bushby, Palmer & Wood
140 Broadway, RM 4428
New York, NY 10005

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/22/88 at 2:15PM, and assigned recordation number(s). 16098, 16099, 16100, 16101, 16102, 16103

Sincerely yours,



Secretary

Enclosure(s)

INTERSTATE COMMERCE COMMISSION

DEC 22 1988 2:15 PM

RECORDATION NO. 1 6098

AGREEMENT TO PURCHASE AND LEASE

Dated as of December 10, 1988

Among

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY,

DB EXPORT-LEASING GmbH,

NEMLC LEASING CORPORATION

and

THE CONNECTICUT NATIONAL BANK,
not in its individual capacity (except as
herein provided) but solely as ETA Trustee

33 Messerschmitt-Boelkow-Blohm Commuter Rail Coaches

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AGREEMENT TO PURCHASE AND LEASE

This Agreement to Purchase and Lease is dated as of December 10, 1988, and is among (i) Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of The Commonwealth of Massachusetts ("MBTA"), (ii) DB Export-Leasing GmbH, a company organized under the laws of the Federal Republic of Germany ("DBX"), (iii) NEMLC Leasing Corporation, a Massachusetts corporation ("NEMLC"), and (iv) The Connecticut National Bank, a national banking association organized under the laws of the United States, not in its individual capacity (except as specifically set forth herein) but solely as trustee under the Equipment Trust Agreement described herein (the "ETA Trustee").

WHEREAS, MBTA has purchased, taken title to and accepted delivery of the DBX Lease Equipment (all capitalized terms herein not otherwise defined have the meanings specified in accordance with Section 1.1) from the Manufacturer pursuant to the MBB Purchase Agreement;

WHEREAS, prior to the Closing, MBTA proposes to lease the Equipment to the ETA Trustee upon payment of the Advance Rental Cost pursuant to the Municipal Lease and the ETA Trustee proposes to lease the Equipment back to MBTA pursuant to the Municipal Sublease;

WHEREAS, DBX desires to acquire the DBX Lease Equipment, to sell the Accounts Receivable to NEMLC in order to pay a portion of the DBX Purchase Price and to lease the DBX Lease Equipment back to MBTA;

WHEREAS, MBTA and NEMLC desire to enter into the Security Deposit Agreement in order to secure the obligation of MBTA to pay the Accounts Receivable; and

WHEREAS, MBTA, DBX and NEMLC desire, and the ETA Trustee is directed, to enter into this Agreement to set forth their agreement regarding the Municipal Documents, the Cross Border Documents, the Cross Border Transaction and the transactions herein and therein contemplated.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1. Certain Terms. The capitalized terms used herein which are defined in, or by reference in, Schedule X hereto, as such capitalized terms may be amended from time to time in

accordance with Section 15(a) hereof, shall have the meanings specified therein whether or not such terms are defined herein.

1.2. Rules of Construction. Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa and words importing persons shall include corporations, partnerships, associations and other entities, including public bodies, as well as natural persons. Whenever reference is made in this Agreement to any agreement, instrument or document, the same shall (unless the context otherwise requires) mean and refer to such agreement, instrument or document as amended and in effect at the relevant time of reference thereto.

SECTION 2. ACTIONS TO BE TAKEN ON CLOSING DATE.

Upon the terms and subject to the conditions of this Agreement, at a closing (the "Closing") to take place at the offices of Morgan, Lewis & Bockius, 101 Park Avenue, New York, New York 10178, on the Closing Date or at such other place as shall be agreed upon by the parties to this Agreement:

(a) DBX shall acquire from MBTA, and MBTA shall transfer to DBX, the DBX Lease Equipment, pursuant to the Full Warranty Bill of Sale, in consideration of the payment by DBX to MBTA of the DBX Purchase Price, which shall be payable as provided in Schedule 1 attached hereto;

(b) NEMLC will purchase the Accounts Receivable from DBX, and DBX will sell and transfer the same to NEMLC, pursuant to the Accounts Receivable Purchase Agreement, in consideration of the payment by NEMLC to DBX of the Accounts Receivable Purchase Price, which shall be payable as provided in Schedule 1 attached hereto;

(c) MBTA shall deliver to NEMLC the Security Deposit, as provided in Schedule 1 attached hereto, and NEMLC shall hold the Security Deposit pursuant to the Security Deposit Agreement; and

(d) each party to this Agreement will deliver to the respective party or parties thereto each of the Cross Border Documents to which it is a party, duly authorized and executed by it, and will perform any obligations thereunder to be performed concurrently with the Closing.

SECTION 3. CONDITIONS PRECEDENT TO THE ACQUISITION OF THE DBX LEASE EQUIPMENT BY DBX.

The obligation of DBX to acquire the DBX Lease Equipment is subject to the fulfillment to the satisfaction of DBX, prior to or concurrently with the Closing, of the following conditions precedent:

(a) No change shall have occurred after the date of this Agreement in Applicable Law or regulations thereunder or interpretations thereof by appropriate regulatory authorities which, in the opinion of DBX, would make it illegal or disadvantageous for DBX to engage in the transactions contemplated hereby.

(b) This Agreement and the following documents shall have been duly authorized, executed and delivered by the respective party or parties thereto, shall each be satisfactory in form and substance to DBX and shall be in full force and effect and executed counterparts thereof shall have been delivered to DBX or its special counsel:

(i) a copy of the Equipment Trust Agreement, certified by MBTA as a true copy;

(ii) a copy of the Municipal Lease, certified by MBTA as a true copy;

(iii) a copy of the Municipal Sublease, certified by MBTA as a true copy;

(iv) the Full Warranty Bill of Sale, dated the Closing Date;

(v) the DBX Lease;

(vi) the Acceptance Certificate, dated the Closing Date;

(vii) the Accounts Receivable Purchase Agreement;

(viii) the Contract for Financial Assistance (DBX Lease) and the MBTA's Assignment (DBX);

(ix) the MBB Purchase Agreement Assignment (DBX) and the Consent and Agreement of the Manufacturer attached thereto;

(x) a copy of the MBB Purchase Agreement

inclusive of specifications and specification change notices or change orders, certified by MBTA as a true copy; and

(xi) the VAT Agreement.

(c) Each condition to the obligations of NEMLC, the ETA Trustee and MBTA contained in, respectively, Sections 4, 5 and 6 hereof (except the condition therein that this paragraph (c) be satisfied), shall have been satisfied, and DBX shall have received each document (including without limitation opinions of counsel) required to be delivered to MBTA, NEMLC and the ETA Trustee thereunder in connection therewith (each such document that is addressed to MBTA, NEMLC or the ETA Trustee shall also be addressed to DBX).

(d) All necessary approvals, authorizations, consents, licenses, certificates and orders of any regulatory or governmental authority having jurisdiction with respect to the ownership, use and operation of the DBX Lease Equipment and the transactions contemplated by this Agreement shall have been obtained (in permanent form or in temporary form with a reasonable expectation that the permanent form is forthcoming), and such approvals, authorizations, consents, licenses, certificates or orders are in full force and effect and constitute sufficient authorization therefor.

(e) Immediately after the Closing (and giving effect thereto), DBX shall have good and marketable title to the DBX Lease Equipment, free and clear of all Liens and rights of others except for Permitted Liens.

(f) MBTA shall have executed and released for filing the UCC-1 financing statements, the precautionary UCC-1 financing or similar statements and the written submissions to the Interstate Commerce Commission referred to in Section 8.1(b).

(g) DBX shall have received an appraisal from the Appraiser, satisfactory to DBX, to the effect that the fair market value of the DBX Lease Equipment as of the Closing Date is at least equal to the DBX Purchase Price.

(h) DBX shall have received a copy of a report of MBTA's independent insurance broker addressed to DBX dated in December 1988 and an Officer's Certificate of MBTA certifying that the insurance policies referred to therein comply with the requirements of Article 9 of the DBX Lease and are in

full force and effect on the Closing Date and that all premiums then due thereon have been paid.

(i) Immediately after the Closing (and giving effect thereto), no Municipal Sublease Default, no Municipal Sublease Event of Default, no DBX Lease Default and no DBX Lease Event of Default shall have occurred and be continuing.

(j) No Event of Loss nor any event which with passage of time would become an Event of Loss shall have occurred with respect to any Item of DBX Lease Equipment.

(k) The representations and warranties of the parties to this Agreement (other than DBX) contained in the Cross Border Documents shall be true and correct in all material respects on and as of the Closing Date.

(l) DBX shall have received an Officer's Certificate from MBTA, addressed to DBX and certifying to the effect that the representations and warranties contained in Section 7.1 of this Agreement are true and correct with respect to MBTA in all material respects.

(m) The closing contemplated by the Purchase Contract shall have occurred.

(n) DBX shall have received an opinion of Dewey, Ballantine, Bushby, Palmer & Wood, special counsel, covering such matters relating to the transactions contemplated hereby as DBX may reasonably request.

(o) DBX shall have received an opinion of Gregory C. Flynn, Esq., counsel to MBTA, covering such matters relating to the transactions contemplated hereby as DBX may reasonably request.

(p) DBX shall have received an opinion of Shipman & Goodwin, special counsel for the ETA Trustee, covering such matters relating to the transactions contemplated hereby as DBX may reasonably request.

(q) DBX shall have received an opinion of Morgan, Lewis & Bockius, special New York counsel for DBX, covering such matters relating to the transactions contemplated hereby as DBX may reasonably request.

(r) DBX shall have received all documents and opinions DBX may reasonably request relating to the existence of MBTA, the creation and perfection of the Liens created by MBTA's Assignment and the MBB Purchase Agreement Assignment, the

corporate authority for and the validity of the Cross Border Documents and any other matters relevant thereto.

The documents and opinions referred to in this Section shall in all cases be in form and substance satisfactory to DBX and its counsel. The certificates, opinions and other documents referred to in paragraphs (g), (h), (l) and (n) through (q), inclusive, of this Section 3 shall be dated the Closing Date.

SECTION 4. CONDITIONS PRECEDENT TO THE OBLIGATION OF NEMLC.

The obligation of NEMLC to purchase the Accounts Receivable from DBX is subject to the fulfillment to the satisfaction of NEMLC, prior to or concurrently with the Closing, of the following conditions precedent:

(a) No change shall have occurred after the date of this Agreement in Applicable Law or regulations thereunder or interpretations thereof by appropriate regulatory authorities which, in the opinion of NEMLC, would make it illegal or disadvantageous for NEMLC to engage in the transactions contemplated hereby.

(b) This Agreement, the Accounts Receivable Purchase Agreement, the Security Deposit Agreement and each of the other Cross Border Documents shall have been duly authorized, executed and delivered by the respective party or parties thereto, shall each be satisfactory in form and substance to NEMLC and shall be in full force and effect and executed counterparts thereof shall have been delivered to NEMLC.

(c) Each condition to the obligations of DBX, the ETA Trustee and MBTA contained in, respectively, Sections 3, 5 and 6 hereof (except the condition therein that this paragraph (c) be satisfied), shall have been satisfied and NEMLC shall have received each document (including without limitation opinions of counsel) required to be delivered to DBX, the ETA Trustee or MBTA thereunder in connection therewith (each such document that is addressed to DBX, the ETA Trustee or MBTA shall also be addressed to NEMLC).

(d) Immediately after the Closing (and giving effect thereto), no DBX Lease Default, no DBX Lease Event of Default and no default under the Accounts Receivable Purchase Agreement shall have occurred and be continuing.

(e) The representations and warranties of the parties to this Agreement (other than NEMLC) contained in the Cross Border Documents shall be true and correct in all material respects on and as of the Closing Date.

(f) NEMLC shall have received an Officer's Certificate of DBX, addressed to NEMLC and certifying that after giving effect to the transactions contemplated in the Cross Border Documents no default under the Accounts Receivable Purchase Agreement shall have occurred and be continuing, and to the effect that the representations and warranties contained in Section 7.2 of this Agreement are true and correct in all material respects.

(g) DBX and MBTA shall have executed and released for filing the UCC-1 financing statements relating to the Accounts Receivable Purchase Agreement referred to in Section 8.1(b).

(h) NEMLC shall have received an opinion of Morgan, Lewis & Bockius, special New York counsel for DBX, covering such matters relating to the transactions contemplated hereby as NEMLC may reasonably request.

(i) NEMLC shall have received an opinion of the in-house legal advisor to DBX, covering such matters relating to the transactions contemplated hereby as NEMLC may reasonably request.

(j) NEMLC shall have received an opinion of Dewey, Ballantine, Bushby, Palmer & Wood, special counsel, covering such matters relating to the transactions contemplated hereby as NEMLC may reasonably request.

(k) NEMLC shall have received an opinion of Gregory C. Flynn, Esq., counsel to MBTA, covering such matters relating to the transactions contemplated hereby as NEMLC may reasonably request.

(l) NEMLC shall have received such additional certificates, statements, reports, opinions and other documents as NEMLC may reasonably request relating to the existence of DBX and MBTA, the creation and perfection of the Lien and other rights created by the Accounts Receivable Purchase Agreement, the authority for and the validity of the Cross Border Documents and any other matters relevant thereto.

The documents and opinions referred to in this Section shall in all cases be in form and substance satisfactory to NEMLC. The certificates, opinions and other documents referred to in paragraphs (f) and (h) through (k), inclusive, of this Section 4 shall be dated the Closing Date.

SECTION 5. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE ETA TRUSTEE.

The obligation of the ETA Trustee to perform its obligations under this Agreement is subject to the fulfillment to the satisfaction of the ETA Trustee, prior to or concurrently with the Closing, of the following conditions precedent:

(a) Each condition to the obligations of DBX, NEMLC and MBTA contained in, respectively, Sections 3, 4 and 6 (except the condition therein that this paragraph (a) be satisfied), shall have been satisfied, and the ETA Trustee shall have received each document (including without limitation opinions of counsel) required to be delivered to DBX, NEMLC or MBTA thereunder in connection therewith (each such document that is addressed to DBX, NEMLC or MBTA shall also be addressed to the ETA Trustee).

(b) DBX shall have executed and released for filing the UCC-1 financing statements and the written submissions to the Interstate Commerce Commission referred to in Section 8.1(b).

(c) The representations and warranties of the parties to this Agreement (other than the ETA Trustee) contained in the Cross Border Documents shall be true and correct in all material respects on and as of the Closing Date.

(d) The ETA Trustee shall have received Officer's Certificates from each of MBTA and DBX, addressed to the ETA Trustee and certifying to the effect that the representations and warranties contained in Sections 7.1 and 7.2, respectively, of this Agreement are true and correct in all material respects.

(e) The ETA Trustee shall have received an opinion of Dewey, Ballantine, Bushby, Palmer & Wood, special counsel, covering such matters relating to the transactions contemplated hereby as the ETA Trustee may reasonably request.

(f) The ETA Trustee shall have received an opinion of Gregory C. Flynn, Esq., counsel to MBTA, covering such matters relating to the transactions contemplated hereby as the ETA Trustee may reasonably request.

(g) The ETA Trustee shall have received an opinion of Shipman & Goodwin, special counsel for the ETA Trustee, covering such matters relating to the transactions contemplated hereby as the ETA Trustee may reasonably request.

(h) The ETA Trustee shall have received an opinion of Morgan, Lewis & Bockius, special New York counsel for DBX, covering such matters relating to the transactions contemplated hereby as the ETA Trustee may reasonably request.

(i) The ETA Trustee shall have received all documents and opinions as the ETA Trustee may reasonably request relating to the existence of MBTA and DBX, the creation and perfection of the liens created by the Cross Border Documents, the corporate authority for and the validity of the Cross Border Documents and any other matters relevant thereto.

The documents and opinions referred to in this Section shall in all cases be in form and substance satisfactory to the ETA Trustee and its counsel. The certificates, opinions and other documents referred to in paragraphs (d) through (i), inclusive, of this Section 5 shall be dated the Closing Date.

SECTION 6. CONDITIONS PRECEDENT TO OBLIGATIONS OF MBTA.

The obligation of MBTA to sell the DBX Lease Equipment to DBX, lease the DBX Lease Equipment back from DBX, grant the security deposit in accordance with the Security Deposit Agreement and to execute and deliver the Cross Border Documents to which it is a party is subject to the fulfillment to its satisfaction, prior to or concurrently with the Closing, of the following conditions precedent:

(a) This Agreement and each of the other Cross Border Documents shall have been duly authorized, executed and delivered by the respective party or parties thereto, shall each be satisfactory in form and substance to MBTA, and shall be in full force and effect and executed counterparts thereof shall have been delivered to MBTA.

(b) All legal matters incident to the transactions contemplated hereby shall be reasonably satisfactory to counsel for MBTA, and no change shall have occurred after the date of this Agreement in Applicable Law or in interpretations thereof by regulatory authorities which, in the opinion of MBTA, would make it illegal or disadvantageous for MBTA to engage in the transactions contemplated hereby.

(c) Each condition to the obligations of DBX, NEMLC and the ETA Trustee contained in, respectively, Sections 3, 4 and 5 hereof (except the condition therein that this paragraph (c) be satisfied), shall have been satisfied, and MBTA shall

have received each document (including without limitation opinions of counsel) required to be delivered to DBX, NEMLC or the ETA Trustee thereunder in connection therewith (each such document that is addressed to DBX, NEMLC or the ETA Trustee shall also be addressed to MBTA).

(d) All necessary approvals, authorizations, consents, licenses, certificates and orders of any regulatory or governmental authority having jurisdiction with respect to the ownership, use and operation of the DBX Lease Equipment and the transactions contemplated by this Agreement shall have been obtained (in permanent form or in temporary form with a reasonable expectation that the permanent form is forthcoming), and such approvals, authorizations, consents, licenses, certificates or orders are in full force and effect and constitute sufficient authorization therefor.

(e) The representations and warranties of the parties to this Agreement (other than MBTA) contained in the Cross Border Documents shall be true and correct in all material respects on and as of the Closing Date.

(f) MBTA shall have received an Officer's Certificate of DBX, addressed to MBTA and certifying to the effect that the representations and warranties contained in Section 7.2 of this Agreement are true and correct in all material respects.

(g) DBX shall have executed and released for filing the UCC-1 financing statements relating to the German Purchase Option referred to in Section 8.1(b).

(h) MBTA shall have received an opinion of Morgan, Lewis & Bockius, special New York counsel for DBX, covering such matters relating to the transactions contemplated hereby as MBTA may reasonably request.

(i) MBTA shall have received an opinion of the in-house legal advisor to DBX, covering such matters relating to the transactions contemplated hereby as NEMLC may reasonably request.

(j) MBTA shall have received an opinion of Dewey, Ballantine, Bushby, Palmer & Wood, special counsel, covering such matters relating to the transactions contemplated hereby as MBTA may reasonably request.

(k) MBTA shall have received an opinion of Shipman & Goodwin, special counsel to the ETA Trustee, covering such

matters relating to the transactions contemplated hereby as MBTA may reasonably request.

(1) MBTA shall have received such additional certificates, statements, reports, opinions and other documents as MBTA may reasonably request relating to the existence of DBX, the creation and perfection of the Lien created by the Cross Border Documents, the authority for and the validity of the Cross Border Documents and any other matters relevant thereto.

The documents and opinions referred to in this Section shall in all cases be in form and substance satisfactory to MBTA. The certificates, opinions and other documents referred to in paragraphs (f) and (h) through (k), inclusive, of this Section 6 shall be dated the Closing Date.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

7.1. Representations and Warranties of MBTA. MBTA represents and warrants as follows:

(a) MBTA is validly existing as a body politic and corporate and a political subdivision of the Commonwealth. MBTA has full power and authority to own and operate its properties, to carry on its business as presently conducted and to enter into and perform its obligations under the Municipal Documents and the Cross Border Documents to which it is a party. The principal office of MBTA, and the office where MBTA keeps its records concerning the DBX Lease Equipment, its accounts and contract rights is located in Boston, Massachusetts.

(b) MBTA has entered into the MBB Purchase Agreement, true copies of which, as of the date hereof, have been furnished to DBX, NEMLC and the ETA Trustee. The MBB Purchase Agreement is in full force and effect. MBTA is in compliance in all material respects with the terms of the MBB Purchase Agreement and knows of no breach thereof by any other party thereto.

(c) Except for the filings of financing statements (and continuation statements with respect to such financing statements) and submissions to the Interstate Commerce Commission in accordance with Section 8.1(b) hereof, no Government Approval of any Government Authority is now, or in the future will be (in either case, under existing United States law), required or necessary to authorize the execution, delivery and performance of the Municipal Documents and the Cross Border Documents to which MBTA is a

party, or for the legality, validity, binding effect or enforceability thereof or (except for action to be taken from time to time by the Advisory Board and the legislature of the Commonwealth) for the making of any payment or the transfer or the remittance of any funds to be made thereunder or in order to establish and perfect the interests in the DBX Lease Equipment of DBX, as against third parties.

(d) Neither the execution and delivery of the Municipal Documents and the Cross Border Documents to which MBTA is or will be a party, the performance by MBTA of its obligations thereunder, the consummation of the transactions contemplated thereby, nor the operation by MBTA of the DBX Lease Equipment pursuant to the DBX Lease, the Municipal Sublease, or both will conflict with or result in any breach of, or constitute a default under, or result in the creation or imposition of any Lien (other than Permitted Liens) upon any Item of DBX Lease Equipment or any material part of the property or assets of MBTA under, any Applicable Law, rule, regulation, judgment or order, or any material indenture, mortgage, deed of trust, or other instrument or agreement to which MBTA is a party or by which it may be bound or to which any of its property or assets may be subject, except that MBTA makes no representation with respect to any law of the Federal Republic of Germany applicable to MBTA's participation in the Municipal Transaction and the Cross Border Transaction.

(e) The execution, delivery and performance by MBTA of the Municipal Documents and the Cross Border Documents to which it is a party are permitted by the Constitution and laws of the Commonwealth, and have been duly authorized by a resolution of its Board and by all other necessary governmental and corporate action. Assuming the due authorization, execution and delivery thereof by each of the other parties thereto and, in the case of the MBB Purchase Agreement Assignment, assuming the due authorization, execution and delivery by the Manufacturer of the Consent and Agreement thereto, and that each such other party has full power, authority and legal right to enter into such Municipal Documents and the Cross Border Documents, each of the Municipal Documents and the Cross Border Documents to which MBTA is a party constitutes or will constitute (except as stated in the last sentence of this Section 7.1(e)) a legal, valid and binding obligation of MBTA enforceable against it in accordance with its terms, subject to any qualifications that may be set forth in the opinions referred to in Section 3(o) hereof. DBX, NEMLC and the ETA Trustee acknowledge that, notwithstanding anything else in this Agreement to the contrary, MBTA has not made any representation as to the

power or authority of MBTA to execute, deliver or perform, or as to the enforceability of, the MBTA's Assignment.

(f) The execution, delivery and performance by MBTA of the Municipal Documents and the Cross Border Documents to which it is or will be a party do not require any approval or consent of any trustee or holder of any indebtedness or other obligations of MBTA.

(g) MBTA is not in default, and no condition exists which with notice or lapse of time or both would constitute a default, under any mortgage, deed of trust, indenture or other instrument or agreement to which MBTA is a party or by which it or any of its properties or assets may be bound, which might have a material and adverse effect on MBTA or on any of the transactions contemplated hereby.

(h) Neither MBTA nor any Person acting on its behalf (it being acknowledged by all parties hereto that neither the Manufacturer nor any party engaged by the Manufacturer has acted or is acting on behalf of MBTA) has taken directly or indirectly any action or failed to take any action in connection with the transactions contemplated by this Agreement which violates any applicable U.S. Federal or state securities laws or directly or indirectly offered or sold any certificate or other interest in the DBX Lease Equipment or in any interest arising under the Cross Border Documents or interests in any similar securities in a manner which would subject any such offer or sale of any such interest or any certificate to the provisions of Section 5 of the Securities Act or any other U.S. Federal or state securities laws.

(i) There are no pending or to the knowledge of MBTA threatened suits or proceedings against MBTA (nor to the knowledge of MBTA any pending or threatened suits or proceedings against any other Person) which, if determined adversely, would materially and adversely affect the business or financial condition of MBTA or the consummation of the Municipal Transaction or the Cross Border Transaction or the full performance of the obligations of MBTA under the Municipal Documents or the Cross Border Documents to which it is or will be a party other than has been disclosed in writing to DBX, NEMLC and the ETA Trustee.

(j) Immediately after the Closing (after giving effect thereto), no Municipal Sublease Default, no Municipal Sublease Event of Default, no DBX Lease Default and no DBX Lease Event of Default shall have occurred and be continuing.

(k) On the Closing Date, upon the payment of the DBX Purchase Price and the execution and delivery of the Full Warranty Bill of Sale, DBX will receive good and marketable title to the DBX Lease Equipment free and clear of all Liens except Permitted Liens; and except for (i) the filing with the Interstate Commerce Commission of the submissions referred to in Section 8.1(b), (ii) the filing under Article 9 of the Uniform Commercial Code of the Commonwealth of financing statements (and continuation statements at periodic intervals) with respect to the security and other interests created by the DBX Lease, the Accounts Receivable Purchase Agreement and the Security Deposit Agreement, and (iii) the placing on the DBX Lease Equipment of the name plates containing the legend referred to in Section 4.1 of the DBX Lease, no further action, including any filing or recording of any document (including any financing statement in respect thereof under Article 9 of the Uniform Commercial Code of any applicable United States jurisdiction), is necessary or advisable in order to establish and perfect the title to and interest of DBX in the DBX Lease Equipment as against MBTA and any third parties in any jurisdiction.

(l) The balance sheet of MBTA as of June 30, 1988, together with the related statement of income for the fiscal year then ended, and for the calendar year ended December 31, 1987, in each case certified by Arthur Andersen & Co., copies of which have been furnished to DBX, NEMLC and the ETA Trustee, have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of MBTA as of such dates and the results of its operations for such periods. Since June 30, 1988, there has been no material and adverse change in condition, financial or otherwise, of MBTA as shown on the audited balance sheet as of June 30, 1988.

(m) MBTA is not a party to any agreement or instrument (other than as reflected in the financial statements referred to in Section 7.1(1) hereof, or as disclosed in writing to DBX, NEMLC and the ETA Trustee) or subject to any legal or regulatory restriction, which if performed or applied in accordance with its terms, would materially and adversely affect MBTA's financial condition, business or operations or the ability of MBTA to perform its obligations under any of the Operative Documents to which it is or will be a party.

(n) MBTA has filed or caused to be filed all Federal, state, local and foreign tax returns which it is required to file and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessment received by MBTA (except to the extent being contested in good faith

and for the payment of which adequate reserves have been provided as shown in the balance sheets referred to in Section 7.1(1) hereof), to the extent that such taxes have become due and payable.

(o) On the Closing Date, the Items of DBX Lease Equipment shall be in such condition as when delivered by the Manufacturer to MBTA, normal wear and tear excepted, and so as to enable the Items of DBX Lease Equipment to be operated in accordance with MBTA's normal operating standards.

(p) The financial statements referred to in Section 7.1(1) hereof, and the documents furnished by MBTA to DBX, NEMLC and the ETA Trustee pursuant to this Agreement or any other Operative Document, taken as a whole, and the Official Statement, dated December 14, 1988, relating to the Certificates as used in connection with the offering of the Certificates, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in any material respect; and there is no fact which MBTA has not disclosed in writing to DBX, NEMLC, the ETA Trustee and the Persons to which its Certificates have been offered which materially and adversely affects or, so far as MBTA to its Actual Knowledge can now reasonably foresee, will materially and adversely affect the financial condition, business or operations of MBTA or the ability of MBTA to perform its obligations under any of the Operative Documents to which it is a party.

(q) The Commonwealth has full right, power and authority to execute, deliver and perform the Contract for Financial Assistance (DBX Lease). No consent, approval, permit, authorization or order of, or registration or filing with, any court or governmental agency, authority or other instrumentality not already fully obtained, made or given, is required on the part of the Commonwealth for the execution, delivery and performance of the Contract for Financial Assistance (DBX Lease).

(r) The Contract for Financial Assistance (DBX Lease) has been duly authorized, executed and delivered by the Commonwealth and does not contravene any provision of law or any rule or regulation of any governmental agency or instrumentality binding upon or applicable to the Commonwealth.

(s) The Contract for Financial Assistance (DBX Lease) constitutes a legal, valid and binding obligation of the Commonwealth, enforceable against the Commonwealth in

accordance with its terms, subject to the exercise of judicial discretion in accordance with general equitable principles and to bankruptcy, insolvency, reorganization, moratorium and other laws heretofore or hereafter enacted for the relief of debtors to the extent constitutionally enforceable.

(t) There are no public bidding requirements applicable to the Cross Border Transaction.

7.2 Representations and Warranties of DBX. DBX represents and warrants that:

(a) DBX is a Gesellschaft mit beschränkter Haftung duly organized and validly existing under the laws of the Federal Republic of Germany.

(b) DBX has full power and authority to enter into, execute, deliver and perform its obligations under the Cross Border Documents to which it is a party.

(c) The execution, delivery and performance by DBX of the Cross Border Documents to which it is a party have been duly authorized by all necessary corporate action; and each of the Cross Border Documents to which DBX is a party has been duly executed and delivered by it and, assuming the due authorization, execution and delivery thereof by each of the other parties thereto and that each of such other parties has full power, authority and legal right to enter into such agreement, each such agreement constitutes the legal, valid and binding obligation of DBX, enforceable against DBX in accordance with its terms, subject to any qualifications that may be set forth in the opinions referred to in Sections 4(h) and 4(i) hereof.

(d) The execution, delivery and performance by DBX of the Cross Border Documents to which it is a party do not require any approval or consent of its shareholders or any approval or consent of any trustee or holder of any of its indebtedness or other obligations, except such as has been obtained.

(e) Neither the execution and delivery by DBX of the Cross Border Documents to which it is a party, the performance by it of its obligations thereunder, nor the consummation by it of the transactions contemplated thereby, will conflict with or result in any breach of, or constitute a default under, or result in the creation or imposition of any Lien, except Permitted Liens, upon the Municipal Lease, Municipal Sublease, the DBX Lease Equipment or any of its

property or assets under, any Applicable Law, rule, regulation, judgment or order, its Articles of Incorporation, or any indenture, mortgage, deed of trust, or other instrument or agreement to which it is a party or by which it may be bound or to which any of its property or assets may be subject.

(f) Except for the filing of financing statements (and continuation statements with respect to such financing statements) and submissions to the Interstate Commerce Commission in accordance with Section 8.1(b) hereof, no Governmental Approval is now or, under existing law, in the future will be, required or necessary to authorize the execution, delivery and performance by it of the Cross Border Documents to which it is a party, or for the legality, validity, binding effect or enforceability thereof or for the making by DBX of any payment or the transfer or the remittance of any funds to be made by DBX thereunder or in order to establish and perfect DBX's interest in the DBX Lease Equipment as against third parties.

(g) Neither DBX nor any Person acting on behalf of DBX, has taken, directly or indirectly, any action, or failed to take any action, which would subject the offer or sale of (i) any interest in the DBX Lease Equipment or any Cross Border Document, or (ii) any security relating to the transactions contemplated hereby or by the other Cross Border Documents to the provisions of Section 5 of the Securities Act or any other United States Federal securities laws or the securities laws of any state of the United States.

(h) DBX is acquiring its interest in the DBX Lease Equipment for its own account for investment and not with a view to, or for sale in connection with any, distribution; provided, that the disposition of its property shall at all times be and remain within its control.

(i) No part of DBX's funding of its interest in and to the DBX Lease Equipment is made through the investment of the assets of any employee benefit plan (within the meaning of ERISA) of DBX.

(j) Immediately after the Closing (after giving effect thereto), the DBX Lease Equipment and the DBX Lease will be free of Lessor Liens attributable to DBX.

(k) DBX is not in default, and no condition exists which with notice or lapse of time or both would constitute a default, under any mortgage, deed of trust, indenture or other instrument or agreement to which it is party or by

which it or any of its properties or assets may be bound, which might have a material and adverse effect on it or on any of the transactions contemplated hereby.

(1) There are no pending or, to its knowledge, threatened suits or proceedings against DBX (nor to its knowledge any pending or threatened suits or proceedings against any of its Affiliates) which, if determined adversely, would materially and adversely affect its ability to perform its obligations under the Cross Border Documents to which it is a party other than as has been disclosed in writing to MBTA, the ETA Trustee and NEMLC.

(m) The chief place of business and the chief executive office of DBX is Taunusanlage 12, D-6000 Frankfurt am Main 1, Federal Republic of Germany.

7.3 Representations and Warranties of NEMLC. NEMLC represents and warrants that:

(a) NEMLC is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth.

(b) NEMLC has full power and authority to enter into, execute, deliver and perform its obligations under the Operative Documents to which it is a party.

(c) The execution, delivery and performance by NEMLC of the Cross Border Documents to which it is a party have been duly authorized by all necessary corporate action; each of the Cross Border Documents to which it is a party has been duly executed and delivered by it and, assuming the due authorization, execution and delivery thereof by each of the other parties thereto and that each of such parties has full power, authority and legal right to enter into such agreement, each such agreement constitutes a legal, valid and binding obligation of NEMLC, enforceable against NEMLC in accordance with its terms.

(d) No Government Approval is required under Applicable Law to authorize the execution, delivery and performance by NEMLC of any Cross Border Document to which it is a party.

(e) NEMLC is acquiring the Accounts Receivable for its own account for investment and not with a view to, or for sale in connection with any, distribution; provided that, the disposition of its property shall at all times be and remain within its control.

(f) NEMLC is not acquiring the Accounts Receivable directly or indirectly with the assets of, any employee benefit plan (within the meaning of ERISA).

(g) NEMLC acknowledges that none of the interests created by the Cross Border Documents or any similar securities have been registered under the Securities Act and that no such interests may be disposed of except pursuant to registration under the Securities Act or an exemption from such registration.

7.4 Representations and Warranties of CNB. CNB represents and warrants that:

(a) CNB is a national banking association duly organized, validly existing and in good standing under the banking laws of the United States of America.

(b) CNB has full corporate power, authority and legal right under the laws of the United States to act as trustee for the Owners of the Certificates under the Equipment Trust Agreement, and, in its individual capacity or as ETA Trustee or both, as the case may be, to execute, deliver and perform its obligations under the terms of this Agreement and the Equipment Trust Agreement, the Municipal Lease and the Municipal Sublease, and to issue the Certificates and to pay, upon receipt of the proceeds of such issuance, the Advance Rental Cost.

(c) The execution, delivery and performance by CNB of this Agreement and the Equipment Trust Agreement have been duly authorized by all necessary governmental and corporate action; the execution, delivery and performance by the ETA Trustee of this Agreement, the Municipal Lease and the Municipal Sublease have been duly authorized by all necessary corporate action; each of this Agreement and the Equipment Trust Agreement, the Municipal Lease and the Municipal Sublease has been duly executed and delivered by one of CNB's officers who is duly authorized to execute and deliver each such Operative document on CNB's or the ETA's Trustee's behalf, as the case may be, and, in reliance upon the advice of counsel, CNB has no reason to believe (assuming the due authorization, execution and delivery of this Agreement by each of the other parties hereto and that each of such parties has full power, authority and legal right to enter into this Agreement) that this Agreement does not constitute a legal, valid and binding obligation of CNB and the ETA Trustee, as the case may be, enforceable in accordance with its terms.

(d) No Government Approval of any Governmental Authority under the laws of the State of Connecticut or the United States of America governing the banking and trust powers of CNB, and no filing, recording, publication or registration in any public office or any other place, is required under the laws of the State of Connecticut or the United States of America governing the banking and trust powers of CNB to authorize the execution, delivery and performance by CNB, or the ETA Trustee, as the case may be, of this Agreement, the Equipment Trust Agreement or the other Municipal Documents or Cross Border Documents to which CNB or the ETA Trustee is a party.

(e) Immediately after the Closing (after giving effect thereto), the ETA Trustee shall have acquired whatever interest in the Equipment was intended to be conveyed to it pursuant to the Municipal Lease, free of Lessor Liens attributable to CNB.

7.5. Survival of Representations and Warranties. The representations and warranties set forth in this Article 7 shall survive the consummation of the transactions contemplated hereby.

SECTION 8. COVENANTS AND INDEMNITY PROVISIONS.

8.1. General.

(a) MBTA hereby consents to all of the terms and provisions of the Accounts Receivable Purchase Agreement. Each of DBX and NEMLC agrees that, without the prior written approval of MBTA, it will not enter into any supplement, amendment, waiver or modification of the Accounts Receivable Purchase Agreement to the extent that such supplement, amendment, waiver or modification shall adversely affect MBTA. Without the written consent of DBX and NEMLC, MBTA will not enter into any amendment, modification or termination of the Contract for Financial Assistance (DBX Lease). Without the written consent of DBX, the ETA Trustee and MBTA will not enter into any supplement, amendment, waiver or modification of the Municipal Lease or the Municipal Sublease, provided, that, subject to Article X of the Equipment Trust Agreement, so long as no DBX Lease Default or DBX Lease Event of Default shall have occurred or be continuing, the ETA Trustee may amend, modify, waive or supplement any term or provision of the Municipal Lease or the Municipal Sublease if such amendment, modification, waiver or supplement is not inconsistent with DBX's rights and obligations under the DBX Lease.

(b) (i) DBX, as seller and as debtor, shall execute in favor of NEMLC, as buyer and as secured party, Uniform Commercial Code financing statements covering all of the security or other interests created by or pursuant to the Accounts Receivable Purchase Agreement and such financing statements shall be duly filed in all places as, in the opinion of counsel for NEMLC, are necessary or desirable to perfect the security or other interests of NEMLC created by or pursuant to the Accounts Receivable Purchase Agreement.

(ii) DBX, as debtor, shall execute in favor of the ETA Trustee, as secured party, Uniform Commercial Code financing statements covering all of the security or other interests created by or pursuant to Section 9.5 of this Agreement and shall execute such written submissions addressed to the Interstate Commerce Commission as the ETA Trustee may reasonably require to comply with the provisions of Section 11303 of Title 49 of the U.S. Code, and such financing statements and submissions shall be duly filed in all places as, in the opinion of special counsel, are necessary or desirable to perfect said security or other interests.

(iii) MBTA, as debtor/lessee for the benefit of DBX, as the secured party/lessor, shall execute such precautionary Uniform Commercial Code financing or similar statements describing the DBX Lease Equipment as are deemed necessary or desirable by counsel for either of DBX to protect the interests of DBX, in the DBX Lease Equipment and such financing statements shall be duly filed in all places as, in the opinion of counsel for either DBX, are necessary or desirable to perfect said interests.

(iv) DBX, as debtor, shall execute in favor of MBTA, as secured party, Uniform Commercial Code financing statements covering all of the security or other interests created by or pursuant to Section 16.2 of the DBX Lease and shall execute such written submissions addressed to the Interstate Commerce Commission as MBTA may reasonably require to comply with the provisions of Section 11303 of Title 49 of the U.S. Code, and such financing statements and submissions shall be duly filed in all places as, in the opinion of counsel to MBTA, are necessary or desirable to perfect said interests.

The financing statements and written submissions referred to in this Section 8.1(b) shall be filed in the order set forth herein. MBTA will take, or cause to be taken, at MBTA's cost and expense, such action with respect to the recording, filing, re-recording and re-filing of the DBX Purchase

Agreement, the DBX Lease, the Accounts Receivable Purchase Agreement, the Security Deposit Agreement, each supplement to any such Cross Border Documents and any Uniform Commercial Code financing or similar statements or other instruments as, in the opinion of counsel for DBX, NEMLC or the ETA Trustee, are necessary to maintain, so long as the DBX Lease is in effect, the perfection of the security interests created by any such Cross Border Document and the interests of DBX, NEMLC and the ETA Trustee in the Equipment or the DBX Lease Equipment, as the case may be, from time to time requested by DBX, NEMLC or the ETA Trustee, or will furnish to DBX, NEMLC and the ETA Trustee such instruments, in execution form, and such other information as may be required to enable them to take such action, as requested by DBX, NEMLC and the ETA Trustee.

At the request of any secured party or assignee thereof, each party hereto identified as debtor or secured party shall execute one or more additional financing statements and/or Interstate Commerce Commission submissions, including amendments and continuation statements, covering such security interests, and MBTA, at its expense, shall cause such financing statement or statements and/or submissions to be filed in such place or places as may be specified in any such request.

(c) MBTA will furnish to DBX, NEMLC and the ETA Trustee, no later than October 31 of each year during which the DBX Lease is in effect, beginning with 1989, an opinion of its General Counsel stating that, with respect to the 12-month period ending on the next succeeding anniversary of the filings referred to in Section 8.1(b), in the opinion of such counsel either (i) such action has been taken (or specifying any action that must be taken), including action with respect to the recording, filing, rerecording and refiling of the DBX Lease, the Accounts Receivable Purchase Agreement and the Security Agreement and any supplements thereto and any financing statements or continuation statements, as is necessary or appropriate under applicable United States law to maintain the perfection of the security interests created thereby and reciting the details of such action or (ii) no action is necessary under applicable United States law to maintain the perfection of such security interests.

(d) CNB agrees, for the benefit of each other Indemnified Person and MBTA, to make restitution to DBX for any actual diminution of the property, rights and privileges constituting the DBX Estate resulting from the imposition or enforcement of any Lessor Lien attributable to it.

(e) MBTA, at its own expense, will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, conveyances, documents and assurances as DBX or

NEMLC may from time to time reasonably request in order to carry out more effectively the intent and purposes of any of the Cross Border Documents and the Cross Border Transaction.

(f) MBTA shall not consolidate with or merge into any other entity or convey, transfer or lease substantially all of its assets as an entirety to any Person, unless:

(i) the entity formed by such consolidation or into which MBTA is merged or the Person which acquired by conveyance, transfer or lease substantially all of the assets of MBTA as an entirety (A) shall be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and (B) shall execute and deliver to DBX and NEMLC an agreement satisfactory in form and substance to each thereof containing an effective assumption by such successor entity of the due and punctual performance and observance of each covenant and condition to be performed or observed by MBTA under the terms of, and all liabilities, obligations and duties of MBTA with respect to, the Municipal Documents and Cross Border Documents to which MBTA is a party;

(ii) immediately after giving effect to such transaction, no DBX Lease Event of Default and no DBX Lease Default shall have occurred and be continuing;

(iii) MBTA shall have delivered to DBX and NEMLC a certificate signed by two officers, one of which shall be the General Manager, and one of which shall be the Treasurer-Controller or the General Counsel of MBTA, and an opinion of MBTA's General Counsel or other counsel selected by MBTA and satisfactory to each of DBX and NEMLC, each stating (A) that such consolidation, merger, conveyance, transfer or lease and the assumption agreement mentioned in clause (i) above comply with this Section 8.1(f), (B) that all conditions precedent herein provided for relating to such transfer have been complied with and (C) that the new lessee under the DBX Lease and new sublessee under the Municipal Sublease has the power and authority to operate the DBX Lease Equipment and the Equipment and perform its obligations under the Municipal Documents and the Cross Border Documents; and

(iv) after taking into account the effect of the protections afforded to DBX and NEMLC by the Contract Clause of the United States Constitution, the credit

support of the Commonwealth in respect of MBTA as provided by the Contract for Financial Assistance and the Contract Assistance Provisions remains substantially in full force and effect.

Upon any consolidation or merger, or any conveyance, transfer or lease of substantially all of the assets of MBTA as an entirety in accordance with this Section 8.1(f), the successor entity formed by such consolidation or into which MBTA is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, and shall be bound to perform every duty and obligation of MBTA under the Municipal Documents and the Cross Border Documents to which it is a party with the same effect as if such successor entity had been a party thereto. Nothing contained herein shall permit any lease, sublease or other arrangement for the use, operation or possession of the DBX Lease Equipment except in compliance with the applicable provisions of the Municipal Sublease and DBX Lease.

(g) DBX agrees, for the benefit of the ETA Trustee, that all insurance proceeds or payments from any Governmental Authority or other Person with respect to the occurrence of an Event of Loss relating to any Item of Equipment shall be paid to or retained by the ETA Trustee for application as provided in Section 8.1 or 8.3 of the Municipal Sublease and Section 8.1(i) hereof.

(h) In the event that any amount held by the ETA Trustee pursuant to Section 8.4 of the Municipal Sublease or Section 7.1(a) or Section 7.1(b) of the Equipment Trust Agreement becomes payable to MBTA, MBTA authorizes and directs the ETA Trustee to, and the ETA Trustee agrees that it will, pay such amount to DBX unless DBX shall have given the ETA Trustee notice that no DBX Default or DBX Event of Default has occurred and is continuing. DBX agrees to apply any moneys received from the ETA Trustee pursuant to this Section 8.1(h) in accordance with the applicable provisions of the DBX Lease.

(i) If an Event of Loss occurs with respect to an Item of Equipment and MBTA elects pursuant to Section 7.1 of the Municipal Sublease to proceed under Section 7.2 thereof, MBTA authorizes and instructs the ETA Trustee to pay to DBX, and the ETA Trustee agrees so to pay, any balance of insurance payments or payments from any Governmental Authority or other Person received by the ETA Trustee in respect of such Event of Loss remaining after the payment or reimbursement to MBTA of amounts due under such Section 7.2 as provided in Section 8.1(a), 8.3(a) or 8.4 of the Municipal Sublease, as the case may be. DBX agrees to apply any moneys received from the ETA Trustee pursuant to

this Section 8(i) in accordance with the applicable provisions of the DBX Lease.

(j) Each of DBX and NEMLC acknowledges notice of, and consents in all respects to, the terms of the Municipal Lease and Municipal Sublease, and expressly, severally and as to its own actions only, agrees that, notwithstanding any other provision of any of the Cross Border Documents, so long as MBTA is in compliance with its obligations under the Municipal Sublease (including applicable grace periods) and no Municipal Sublease Event of Default has occurred and is continuing, it shall not take or cause to be taken any action contrary to MBTA's rights under the Municipal Sublease, including, without limitation, the right to possession and use of the Equipment.

(k) At the expiration or earlier termination of the DBX Lease, the obligations of DBX hereunder and under the other Cross Border Documents to which DBX is a party shall terminate and, as to DBX, the terms and provisions of any thereof shall have no further force and effect except that Sections 8.2 and 8.3 hereof, Section 8.2 of the DBX Lease and the VAT Agreement shall survive with respect to any claims of DBX as an Indemnified Person hereunder or thereunder.

(l) If at any time an Appropriation has not occurred with respect to the next ensuing Fiscal Period, MBTA shall give written notice of that fact to DBX at least 30 days prior to the first day of such Fiscal Period. If a budget of MBTA that does not constitute an Appropriation with respect to the next ensuing Fiscal Period has been adopted by the Advisory Board, MBTA shall give written notice of such fact to Sublessor within 30 days of its occurrence.

(m) Each of NEMLC, the ETA Trustee and MBTA acknowledges and agrees that, in no case whatsoever shall DBX be personally liable on or for any loss in respect of any of the representations, warranties, agreements or obligations of DBX under this Agreement, the DBX Lease, or the Accounts Receivable Purchase Agreement, as to all of which the NEMLC, the ETA Trustee and MBTA agree to look solely to the DBX Estate except that DBX shall be personally liable for any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by or asserted at any time against any other party hereto with respect to the Cross Border Transaction arising out of or based upon (i) any failure to perform its payment obligations under Section 2 hereof, (ii) any breach of its representations and warranties contained in this Agreement, (iii) the gross negligence or willful misconduct of DBX or (iv) a

failure to perform its agreements and obligations set forth in Section 8.7 hereof.

(n) MBTA shall promptly provide to DBX, NEMLC and the ETA Trustee copies of all notices and documents delivered by MBTA or the Executive Office for Administration and Finance of the Commonwealth in accordance with the provisions of Section 6.1 of the Contract for Financial Assistance (DBX).

(o) Notwithstanding anything to the contrary in the Municipal Documents and the Cross Border Documents, the ETA Trustee acknowledges and agrees that it has no interest in the Accounts Receivable.

8.2. General Tax Indemnity.

(a) MBTA's Obligation to Indemnify. MBTA agrees to pay and to indemnify and hold each APL Tax Indemnitee and any Affiliate thereof harmless on an After-Tax Basis from any Tax, howsoever imposed, whether by withholding, levy or otherwise, upon any APL Tax Indemnitee, MBTA, the DBX Lease Equipment, any document or otherwise, by the United States Federal government or any state or local government or the government of any foreign country (including any political subdivision or taxing authority now or hereafter existing under the laws of any of the foregoing entities) that is based upon, measured by or is with respect to:

(i) the DBX Lease Equipment or any Item or DBX Lease Part thereof;

(ii) the purchase, ownership, delivery, leasing, subleasing, possession, use, operation, storage, sale, transfer of title, manufacture, financing, assembly, repair, return or other disposition of the DBX Lease Equipment or any Item or DBX Lease Part thereof;

(iii) the rentals, receipts or earnings arising from the DBX Lease Equipment or any Item or DBX Lease Part thereof;

(iv) the Cross Border Documents or any document executed pursuant to or otherwise provided for by any Cross Border Document;

(v) any payment made pursuant to any Cross Border Document or any document executed pursuant to or otherwise provided for by any Cross Border Document;

(vi) any receipts, earnings, gross income or net income resulting directly or indirectly from the receipt or

right to receive any refund or credit pursuant to the MBB Purchase Agreement or from any payment by the Manufacturer in satisfaction of a claim against the Manufacturer with respect to the DBX Lease Equipment under any warranty or indemnity provision of the MBB Purchase Agreement;

(vii) the replacement or substitution of any Item of DBX Lease Equipment;

(viii) the property, or the income or other proceeds received with respect to property, held by NEMLC pursuant to the Accounts Receivable Purchase Agreement or the Security Deposit Agreement; or

(ix) otherwise upon or with respect to the transactions provided or contemplated by the Cross Border Documents.

(b) Exclusions. The provisions of Section 8.2(a) shall not apply to:

(i) any Tax on an APL Tax Indemnatee imposed on a sale, transfer, assignment or other disposition (whether during or after the DBX Lease Term) by DBX of any interest in the DBX Lease Equipment or any Item or DBX Lease Part thereof, the DBX Lease or any of the Cross Border Documents, unless such sale, transfer, assignment or other disposition is made (v) involuntarily (other than by reason of circumstances unrelated to the transactions provided or contemplated by the Cross Border Documents), (w) pursuant to Article 5 or Article 10 of the DBX Lease, (x) pursuant to the Accounts Receivable Purchase Agreement, (y) resulting from, or during the continuance of, a DBX Lease Event of Default, or (z) at the instance of or with the written consent of MBTA, provided such consent specifically refers to this Section 8.2 and states that it shall be considered a consent for purposes of this Section 8.2;

(ii) any Tax imposed with respect to an APL Tax Indemnatee (x) solely with respect to, or applicable or apportionable to, any date, time or period of time occurring after redelivery of the DBX Lease Equipment to DBX in accordance with Article 15 of the DBX Lease (other than a redelivery pursuant to Article 13 of the DBX Lease), or (y) after the later of the expiration of the DBX Lease Term and, if MBTA purchases the DBX Lease Equipment pursuant to Article 16 of the DBX Lease or the DBX Lease Equipment is sold to a third Person, the consummation of such purchase or sale, provided that such Tax does not relate to events or matters occurring prior to or coincidental with such redelivery,

expiration or transfer or occurring on account of a DBX Lease Event of Default under Article 12 of the DBX Lease;

(iii) any Tax imposed on an APL Tax Indemnatee that is attributable to (x) a Lessor Lien with respect to DBX, (y) the gross negligence or willful misconduct of such APL Tax Indemnatee, or (z) the breach by such APL Tax Indemnatee of any representation, warranty or covenant contained in Article 7 hereof or this Article 8 (other than Section 8.1(a));

(iv) any Tax imposed on DBX or any Affiliate thereof by (x) any jurisdiction other than the Federal Republic of Germany provided such Tax would not have been imposed if (1) the only transactions or activities engaged in by DBX or such Affiliate in the jurisdiction imposing the Tax are the transactions provided or contemplated by the Agreement to Purchase and Lease dated as of June 25, 1988 among Massachusetts Bay Transportation Authority, Security Pacific Equipment Leasing, Inc., DB Export-Leasing GmbH, Deutsche Credit Corporation, New England Merchants Funding Corporation, and Wilmington Trust Company and the Cross Border Transaction or activities in connection therewith or related thereto and (2) if DBX is not a "United States person" within the meaning of Section 7701(a)(3) of the Code or (y) the Federal Republic of Germany;

(v) any Tax imposed on NEMLC or any Affiliate thereof other than by reason of the role of NEMLC as a party to, or the exercise of its rights or the performance of its obligations under, the DBX Purchase Agreement, the Security Deposit Agreement or the Accounts Receivable Purchase Agreement; or

(vi) any value added tax imposed by the Federal Republic of Germany.

(c) [Intentionally Not Used]

(d) Procedure for Claims for Indemnity. If a claim is made against an APL Tax Indemnatee for any Tax subject to indemnity under this Section 8.2 and such APL Tax Indemnatee has reasonable notice of such claim, such APL Tax Indemnatee shall promptly notify MBTA of such claim. If timely requested by MBTA in writing, such APL Tax Indemnatee shall, upon receipt of an indemnity satisfactory to it for such Tax and for all costs, expenses, losses, legal and accountants fees and disbursements, penalties, fines, additions to tax and interest, and, at the expense of MBTA, contest (or shall permit MBTA, if desired by such APL Tax Indemnatee, to contest with counsel reasonably acceptable to such APL Tax Indemnatee, provided that there shall

be no more than one such counsel) in good faith (unless such APL Tax Indemnatee determines in good faith that such contest would result in the sale, forfeiture, or loss of, or the creation of any Lien (except any Lien (i) which is permitted by the DBX Lease or (ii) which is bonded by MBTA or as to which MBTA has otherwise made provisions to protect the interests of the APL Tax Indemnitees in a manner reasonably satisfactory to such APL Tax Indemnatee) on, the DBX Lease Equipment, the DBX Lease, or any part thereof) the validity, applicability or amount of such Tax by, at the election of such APL Tax Indemnatee, (i) resisting payment thereof if possible, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both; provided, however, that if such contest shall be conducted in a manner requiring the payment of the claim, MBTA shall have paid such claim to the extent required. Such APL Tax Indemnatee shall consult in good faith with MBTA regarding the manner in which such APL Tax Indemnatee shall conduct such contest.

(e) Tax Returns, Etc. If any report or return is required to be made to any jurisdiction or taxing authority with respect to any Tax that is the responsibility of MBTA under this Section 8.2, MBTA shall make such report or return on a timely basis and in such manner as will show, if appropriate, the interest of DBX in the DBX Lease Equipment and send a copy of such report or return to DBX. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by MBTA and MBTA shall, to the extent any Tax required to be paid with such return or report is a Tax with respect to which MBTA is required to indemnify DBX under this Section 8.2, pay such Tax with such return or report on the due date.

(f) Payments, Etc. Except as provided in Section 8.2(d), MBTA covenants and agrees to pay all amounts under this Section 8.2 within 30 days of notice from an APL Tax Indemnatee that such amount is due; provided, that, if such notice certifies that such amount is due prior to the end of such 30-day period, MBTA will use reasonable efforts to pay such amount on such due date. MBTA further covenants and agrees to indemnify such APL Tax Indemnatee against any Tax indemnified against under this Section 8.2 imposed upon such APL Tax Indemnatee by reason of any payment made by MBTA to any other Person (other than such APL Tax Indemnatee) for or on behalf of such APL Tax Indemnatee. In the event MBTA is required to indemnify any Person for a Tax under this Section 8.2, MBTA shall pay to such Person an amount on an After-Tax Basis equal to the amount of the indemnification required.

(g) Subrogation. Upon payment of any indemnity pursuant to this Section 8.2, MBTA shall to the extent permitted by Applicable Law be subrogated to any rights of the APL Tax Indemnatee, in respect of the matter against which such indemnity was given but only to the extent of the amount of the indemnity.

(h) Payments to MBTA. If an APL Tax Indemnatee shall obtain a refund, credit or other tax benefit with respect to any Tax in respect of which MBTA has paid an indemnity under this Section 8.2, provided that no DBX Lease Event of Default or DBX Lease Default has occurred and is continuing, such APL Tax Indemnatee shall pay to MBTA the amount of such refund, credit or other tax benefit (reduced by any correlative tax detriment) including any interest received thereon, plus any net reduction of Taxes imposed on such APL Tax Indemnatee resulting from such payment to MBTA hereunder (the APL Tax Indemnatee's good faith determination of such amount being final and binding in all respects), provided that any subsequent loss of such refund, credit or other tax benefit shall be treated as a Tax subject to full indemnification under this Section 8.2 (without regard to any exclusions to MBTA's obligation to indemnify thereunder). An APL Tax Indemnatee is not required to make any payments to MBTA under this Section 8.2(h) with respect to any particular Tax, to the extent that such payments would exceed the aggregate payments by MBTA to such APL Tax Indemnatee under this Section 8.2 with respect to the same Tax and the same related return, report, date, time or period. Nothing in this Section 8.2(h) shall (i) require any APL Tax Indemnatee to manage its tax affairs other than as it deems to be in its best interest or (ii) create any right of MBTA to inspect the records of any APL Tax Indemnatee or to require the disclosure of any information not otherwise available to MBTA pursuant to this Section 8.2.

(i) Agreement of APL Tax Indemnitees. If an APL Tax Indemnatee entitled to an indemnity under this Section 8.2 is not a party to this Agreement, MBTA may require the APL Tax Indemnatee to agree to the terms of this Section 8.2 prior to making any payments to the APL Tax Indemnatee under this Section 8.2.

(j) Tax Receipts. MBTA will furnish promptly to each APL Tax Indemnatee documentation acceptable to such APL Tax Indemnatee evidencing the payment, deduction or withholding by MBTA of any Tax indemnified against under this Section 8.2 imposed on or for the account of such APL Tax Indemnatee.

8.3. General Indemnity. MBTA does hereby assume liability for, and does hereby agree to defend, indemnify, protect, save and hold harmless on an After-Tax Basis each Indemnified Person and each Affiliate thereof from and against,

any and all liabilities (including but not limited to liability arising out of any doctrines of negligence, warranty, absolute liability and/or strict liability), obligations, losses, damages, penalties, claims, costs (including costs of enforcement of any one or more of the Cross Border Documents against MBTA resulting from breach thereof by MBTA), expenses and disbursements (including legal fees and expenses and costs of appraisal and investigation), of whatsoever kind and nature (a "Claim"), whether or not any of the transactions contemplated hereby are consummated, which may be imposed on, incurred by or asserted against any Indemnified Person and in any way relating to or arising out of (a) this Agreement, the Municipal Lease, the Municipal Sublease, the DBX Lease, the MBB Purchase Agreement Assignment (DBX), the MBB Purchase Agreement, any other Municipal Documents or Cross Border Documents (including, without limitation, in connection with the administration of any provisions of this Agreement, the Municipal Lease, the Municipal Sublease, the DBX Lease, or the Accounts Receivable Purchase Agreement or the exercise of any rights or the enforcement of any remedies upon the occurrence of any default by any party under any Municipal Document or Cross Border Document), any one or more of the documents delivered pursuant to this Agreement, or any assignment hereof or thereof by MBTA or sublease thereunder, or (b) the manufacture, purchase, acceptance or rejection of the DBX Lease Equipment under the MBB Purchase Agreement, this Agreement, the Municipal Lease, the Municipal Sublease or the DBX Lease, or the ownership, delivery, nondelivery, lease, sublease, possession, use, operation, leasing, subleasing, condition, maintenance, modification, rebuilding, repair, sale, return, redelivery or other disposition of the DBX Lease Equipment (including without limitation, any claim arising out of latent or other defects, whether or not discoverable by DBX, MBTA, or any other Person, or any claim for patent, trade secret, trademark or copyright infringement or violation of any similar right in intangibles, and any Claim arising out of any loss, injury or damages to any person or any property), except only that MBTA shall not be required pursuant to this Section 8.3 to indemnify (i) any Indemnified Person for any expenses to be borne by such Indemnified Person pursuant to the express provisions hereof, (ii) any Indemnified Person for loss or liability to the extent resulting from its own gross negligence or misconduct, or (iii) any Indemnified Person for any Tax (but nothing in this Section 8.3 is meant to limit or modify the indemnities provided in Section 8.2 hereof, Section 8.2 of the DBX Lease or the VAT Agreement). Upon payment of any indemnity pursuant to this Section 8.3, MBTA shall to the extent permitted by Applicable Law be subrogated to any rights of the Indemnified Person in respect of the matter against which such indemnity was given but only to the extent of the amount of the indemnity. Nothing contained in this Section 8.3 shall be deemed to confer any right in favor of,

or create any obligation of MBTA to, anyone whomsoever except each Indemnified Person. IT IS UNDERSTOOD AND AGREED THAT NONE OF THE INDEMNIFIED PERSONS HAS ANY DUTY OR OBLIGATION OF ANY CHARACTER OR KIND WHATSOEVER WITH RESPECT TO THE MANUFACTURE, FABRICATION, ACCEPTANCE, REJECTION, POSSESSION, USE, OPERATION, CONDITION OR DISPOSITION OF ANY DBX LEASE EQUIPMENT AT OR DURING ANY TIME COVERED BY THE MUNICIPAL LEASE, THE MUNICIPAL SUBLEASE OR THE DBX LEASE, AND NO CLAIM OF NEGLIGENCE OR MISCONDUCT OR BREACH OF ANY OF ITS REPRESENTATIONS, WARRANTIES OR COVENANTS ON THE PART OF ANY INDEMNIFIED PERSON MAY BE PREDICATED IN ANY WAY UPON ANY SUCH ALLEGED DUTY.

8.4. Survival and Effect of Indemnities. The indemnities of MBTA provided for in this Agreement, and MBTA's obligations under any and all thereof, including specifically the indemnities provided for in Sections 8.2 and 8.3, shall survive any investigation or any other action taken by any Indemnified Person and the expiration or other termination of the Municipal Lease, the Municipal Sublease or the DBX Lease or any of the Operative Documents. MBTA's obligations under the indemnities provided for in this Agreement shall be those of a primary obligor (and not of a guarantor or surety) whether or not the Indemnified Person shall also be indemnified with respect to the same matter under the terms of any other document or instrument, and any Indemnified Person seeking indemnification from MBTA pursuant to any provision of this Agreement may proceed directly against MBTA without first seeking to enforce any other right of indemnification.

8.5. Financial Statements. MBTA agrees that it will furnish to DBX and NEMLC (a) as soon as available, but in any event within 210 days after the end of such fiscal year, a balance sheet of MBTA as of the end of each fiscal year and related statements of revenue and cost of service, unreimbursed cost of service and changes in financial condition of MBTA for such fiscal year, certified by public accountants of national standing, each of which shall be in consolidated form with comparative consolidated figures for the preceding periods and shall be prepared in accordance with generally accepted accounting principles consistently applied, (b) as soon as available to MBTA, a balance sheet of the Commonwealth as of the end of each fiscal year and related statements of revenue and changes in financial condition of the Commonwealth for such fiscal year, certified by public accountants of national standing, (c) if prepared, as soon as available, but in no event more than 210 days after the end of the applicable fiscal period, a balance sheet of MBTA, as at the end of the first six months of the current fiscal year and related statement of net cost of service for such six month period, certified either by public accountants of national standing or by the Treasurer-Controller

of MBTA as having been prepared in accordance with generally accepted accounting principles and the Act and (d) such other financial statements, reports and such further information regarding the financial condition and financial affairs of MBTA as may be reasonably requested by DBX or NEMLC.

8.6. Inspection. MBTA will permit any authorized representative designated by DBX or NEMLC without any fee payable to or reimbursement of expenses of MBTA (a) at such Person's expense (except that if a DBX Lease Default, a DBX Lease Event of Default, a Municipal Sublease Default or a Municipal Sublease Event of Default has occurred and is continuing, at MBTA's expense), to visit and inspect any Item of DBX Lease Equipment and examine its condition, use and operation and to inspect the records maintained in connection therewith and (b) to discuss the foregoing and the finances and accounts of MBTA, as the same may affect the performance by MBTA of its obligations hereunder, with the financial officers and the independent accountants of MBTA, provided that such visits, inspections and discussions do not result in an unreasonable interference with the operations of MBTA and are done at such reasonable times as may be reasonably requested except that MBTA shall in any event make such DBX Lease Equipment and related records available for inspection within five Business Days of request. None of such Persons shall have any duty to make any such inspection.

8.7. Preservation of Lien. Each of DBX and CNB agrees that it will not directly or indirectly cause, create, incur, assume or suffer to exist any Lessor Lien attributable to it on or with respect to any Item of DBX Lease Equipment, the Municipal Lease, the Municipal Sublease, the DBX Lease, any interest therein or any portion of the DBX Lease Equipment, the Municipal Lease, the Municipal Sublease or the DBX Lease and that it will promptly cause any such Lien to be discharged at its own expense; DBX agrees to indemnify, protect, save and keep harmless MBTA and NEMLC from and against any reduction in the amount payable out of the DBX Lease or the Accounts Receivable Purchase Agreement or any other loss, cost or expense (including legal fees and expenses) incurred by MBTA or NEMLC as a result of the imposition or enforcement of any such Lessor Lien attributable to it; and CNB agrees to indemnify, protect, save and keep harmless DBX from and against any reduction in the amount payable out of the Municipal Lease, the Municipal Sublease or the DBX Lease, or any other loss, cost or expense (including legal fees and expenses) incurred by DBX as a result of the imposition or enforcement of any such Lessor Lien attributable to it.

SECTION 9. POWER OF SALE

9.1. Power of Sale. DBX hereby grants to the ETA Trustee the right and power, exercisable upon (a) the occurrence of a Municipal Sublease Event of Default or any failure of MBTA to pay a Rental Payment on a Rental Payment Due Date and (b) the giving of the "First Notice" required by Section 9.4 hereof, to take possession of and to sell the Equipment, as agent of DBX, subject to the terms of this Section 9 (the "DBX Power of Sale"). Any sale of the Equipment by the ETA Trustee pursuant to the DBX Power of Sale shall be made in a commercially reasonable manner, at public or private sale, as the ETA Trustee may determine, and shall vest in the purchaser at such sale with such title as DBX has in the Equipment. The DBX Power of Sale shall not apply to the Additional Equipment.

9.2. Agreement to Sell. Upon the occurrence of any failure of MBTA to pay a Rental Payment on a Rental Payment Due Date, any Municipal Sublease Event of Default in respect of which the ETA Trustee elects to exercise remedies which deprive MBTA of the quiet enjoyment of the Equipment or a termination of the Municipal Sublease, the ETA Trustee shall exercise its rights under the Municipal Sublease and the DBX Power of Sale promptly to take possession of and sell the Equipment. The ETA Trustee agrees to consult with DBX regarding any proposed sale of the Equipment, but the failure so to consult will not affect the right of the ETA Trustee to exercise the DBX Power of Sale nor will the ETA Trustee have any liability to DBX due to any such failure. Anything contained in this Section 9.2 to the contrary notwithstanding, the ETA Trustee agrees with DBX that (i) it will not exercise any remedy by reason of the occurrence of a Municipal Sublease Event of Default other than sale of the Equipment unless in its good faith judgment such sale would not realize amounts sufficient to pay all amounts referred to in clauses (i) and (ii) of Section 7.1(b) of the Equipment Trust Agreement and (ii) in any event it will exercise any remedies available by reason of a Municipal Sublease Event of Default in a manner which in its good faith judgment will realize the best recovery.

9.3 Application of Proceeds. Unless MBTA has exercised the German Purchase Option, upon any sale by the ETA Trustee of the Equipment pursuant to an exercise of its rights under the Municipal Sublease or the DBX Power of Sale, or pursuant to an exercise of any rights it may have at law or in equity, the ETA Trustee will apply the net proceeds of such sale, first, as provided in clauses (i) and (ii) of Section 7.1(b) of the Equipment Trust Agreement, and second, the balance, if any, shall be paid to DBX. MBTA irrevocably authorizes and directs the ETA Trustee to make the payments required by this Section 9.3 and

waives any right (other than any right it may have under the DBX Lease) to any moneys paid to DBX hereunder. DBX agrees to apply any moneys received from the ETA Trustee pursuant to this Section 9.3 in accordance with the applicable provisions of the DBX Lease.

9.4. Notice; Right to Purchase. At any time when the DBX Power of Sale is exercisable, the ETA Trustee will give DBX notice thereof (the "First Notice") and at any time thereafter, until DBX shall receive notice from the ETA Trustee that the DBX Power of Sale is no longer exercisable, DBX shall have the right to revoke the DBX Power of Sale and require the ETA Trustee to terminate the Municipal Lease and the Municipal Sublease and purchase the interest of the ETA Trustee in and to the Equipment by paying to the ETA Trustee an amount equal to (a) all unpaid Rental Payments minus the unaccrued interest component thereof calculated to the date which is 45 days after the date on which such payment constitutes available funds to the ETA Trustee, (b) all other accrued and unpaid amounts due and owing to the ETA Trustee under the Equipment Trust Agreement and (c) all reasonable and necessary fees and expenses of the ETA Trustee thereunder. The ETA Trustee shall inform DBX of the amount of such amounts, fees and expenses promptly upon the request by DBX therefor. Upon receipt of such amount by the ETA Trustee, the DBX Power of Sale shall expire and be extinguished. The ETA Trustee shall apply such amount to the payment of all Outstanding Certificates in accordance with the provisions of the Equipment Trust Agreement, and upon making such payment, the ETA Trustee shall comply with the provisions of Section 9.6 hereof. DBX agrees to apply any moneys realized by it upon the resale, releasing or use of the Equipment following an exercise of its right under this Section 9.4 in the following order of priority: first, in the manner provided in clause "First" of Section 13.2 of the DBX Lease; second, to reimburse itself for the amount paid to the ETA Trustee upon such exercise; third, in the manner provided in clause "Second" of Section 13.2 of the DBX Lease; and fourth, the balance, if any, of any moneys remaining thereafter shall be paid to MBTA.

9.5. Security Interest. DBX hereby grants to the ETA Trustee a security interest in the Equipment described in Schedule 3 attached hereto and in all additions, attachments, accessions and substitutions to or for the Equipment and in any proceeds of the Equipment, but not the Accounts Receivable, to secure the grant to the ETA Trustee of the DBX Power of Sale. DBX agrees to execute such additional documents, including financing statements, continuation statements, affidavits, notices and similar instruments, in form satisfactory to the ETA Trustee, which the ETA Trustee deems necessary or appropriate to

establish and maintain the ETA Trustee's security interest created hereunder.

9.6. Covenant of ETA Trustee. In the event that (a) DBX exercises its right to purchase the interest of the ETA Trustee in and to the Equipment as provided in Section 9.4 hereof or (b) MBTA does not exercise the German Purchase Option and all Outstanding Certificates are paid, the ETA Trustee will deliver a bill of sale and such other documents DBX may reasonably require transferring, releasing and quitclaiming to DBX all the right and interest of the ETA Trustee and of the Trust Estate created by the Equipment Trust Agreement.

SECTION 10. EXPENSES.

(a) MBTA shall pay all costs and expenses of the report of the Appraiser to be delivered to DBX pursuant to Section 3(g) hereof.

(b) Except as otherwise provided in the VAT Agreement, MBTA agrees to pay all reasonable costs, fees and disbursements, computer and data processing charges, document production and other out-of-pocket expenses and costs of DBX, NEMLC and the ETA Trustee in connection with any supplements, amendments or modifications to the Cross Border Documents or waivers of provisions of the Cross Border Documents contemplated in the Cross Border Documents, or consents or other documents relating to the transactions contemplated in the Cross Border Documents which are required to be entered into after the Closing Date as the result of a request made, or action taken, by MBTA.

(c) MBTA also agrees, in the event of a breach or default by MBTA hereunder and/or under any Cross Border Document, to pay all costs and expenses incurred in the enforcement thereof including, but not limited to, costs of collection and attorneys fees, and any costs of proceeding under bankruptcy or insolvency proceedings.

SECTION 11. LIABILITIES OF CERTAIN PARTIES.

None of DBX, NEMLC or the ETA Trustee shall have any obligation or duty to MBTA or to the others of them with respect to the transactions contemplated hereby except those obligations or duties expressly set forth in the Cross Border Documents.

SECTION 12. ASSIGNMENT

(a) Except as provided in Section 8.1(f) hereof, neither this Agreement nor any right hereunder is assignable by MBTA without the express written consent of DBX, NEMLC and the ETA Trustee, nor is assignable by DBX, except in accordance with the provisions of Section 12(d).

(b) The parties hereto agree that, upon any transfer pursuant to Section 12, DBX shall be thereby released from all of its future obligations under the Cross Border Documents except for accrued obligations and those attributable to periods prior to such transfer and except to the extent for which it may otherwise be liable as provided in Section 12(d), as the case may be.

(c) [Intentionally not used]

(d) Except pursuant to the Accounts Receivable Purchase Agreement, DBX shall not assign, convey or otherwise transfer all or any portion of its right, title or interest in, to and under the DBX Lease Equipment, this Agreement, or any Cross Border Document to which DBX is a party without the written consent of the ETA Trustee and MBTA; provided, however, that DBX may transfer its right, title or interest in, to or under the DBX Lease Equipment or any item thereof and under this Agreement and any other Cross Border Document to a transferee without the written consent of the ETA Trustee and MBTA if

(i) the transferee certifies to MBTA that the transferee constitutes both a "German enterprise" and a "German company" within the meaning of the Double Taxation Treaty between the United States and the Federal Republic of Germany as in effect on the date of this Agreement (or falls within the scope of terms having a purpose that is substantially the same as the foregoing terms but which are contained in a double taxation convention, treaty or protocol between the United States and the Federal Republic of Germany that replaces such Double Taxation Treaty and is in effect at the time of the transfer), and which is not considered to be engaged in a trade or business within the United States through a permanent establishment within the meaning of said Double Taxation Treaty (or replacement therefor as hereinabove described) solely by reason of transactions or activities that are unrelated to the transactions or activities contemplated by the Cross Border Documents and

(ii) the transferee has at the time of such transfer either a tangible net worth of at least \$50,000,000 (based on the then current exchange rates) or a rating on its long term, unsecured debt of A or higher by Moody's or an equivalent rating by any other nationally recognized rating agency

satisfactory to the ETA Trustee and MBTA. Any such transferee shall enter into an agreement or agreements, in form and substance reasonably satisfactory to the ETA Trustee and MBTA whereby the transferee confirms that, with respect to the interests so transferred, the transferee shall be deemed a party to this Agreement and to undertake the obligations of DBX under the Cross Border Documents.

SECTION 13. NOTICES AND COMMUNICATIONS.

(a) Except as otherwise expressly specified or permitted herein, all notices, offers, instructions, acceptances, approvals, waivers, requests, demands and other communications required or permitted hereunder to be given to or made upon any party hereto or under any instrument, certificate or other document delivered in connection with the transactions described herein shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by an overnight delivery service which provides signed acknowledgment of receipt, (c) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid Telex, TWX or telegram (with messenger delivery specified in the case of a telegram) or by telecopier and, in each such case, confirmed by telephone. Communications so mailed shall be effective upon the expiration of five Business Days after its deposit. Communications given in any other manner shall be effective upon receipt by the addressee; provided, however, that if any communication is tendered to an addressee and the delivery thereof is refused by such addressee, such communication shall be effective upon the tender. For the purposes of communications the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for communications hereunder to any other location by giving 30 days' notice to the other party in the manner set forth hereinabove. The initial addresses of the parties hereto are as follows:

If to MBTA:

Massachusetts Bay
Transportation Authority
Ten Park Plaza
Boston, Massachusetts 02116
Attn: Treasurer-Controller

With copies to:

Dewey, Ballantine, Bushby, Palmer & Wood
140 Broadway
New York, New York 10005

If to DBX:

DB Export-Leasing GmbH
Taunusanlage 12,
D-6000 Frankfurt am Main 1
Federal Republic of Germany
Attn: General Manager

With copies to:

Morgan, Lewis & Bockius
101 Park Avenue
New York, New York 10178

If to NEMLC:

NEMLC Leasing Corporation
28 State Street
Boston, Massachusetts 02109
Attn: Vice President - Administration

With copies to:

Morgan, Lewis & Bockius
101 Park Avenue
New York, New York 10178

If to the ETA Trustee:

The Connecticut National Bank
777 Main Street
Hartford, CT 06115
Attention: Corporate Trust Administration

and at such other address as the foregoing Persons shall
from time to time designate in writing to the other
parties hereto in the manner herein provided.

(b) So long as the Accounts Receivable Purchase
Agreement is in effect, each of MBTA, NEMLC and the ETA Trustee
will deliver promptly to NEMLC copies of each communication
received by it in connection with transactions contemplated
hereby and by the other Cross Border Documents not otherwise

required by the terms of such Cross Border Documents to be delivered to NEMLC.

SECTION 14. GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth, including, without limitation, all matters of construction, validity and performance.

SECTION 15. AMENDMENTS; MISCELLANEOUS.

(a) Neither this Agreement, nor the definition of any capitalized term used herein which is defined in or by reference in Schedule X attached hereto, as such capitalized term is used herein, shall be altered, modified, amended or supplemented, nor shall this Agreement or any terms hereof be waived or terminated, in any manner whatsoever except by written instrument signed by the party against which the enforcement of such alteration, modification, amendment, supplement, termination or waiver is sought.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors or permitted assigns.

(c) All amounts and monies referred to in this Agreement shall be construed to mean Dollars.

(d) Section headings and the Table of Contents are for convenience only and shall not be construed as part of this Agreement. All references herein to numbered sections, exhibits and schedules, unless otherwise indicated, are to sections, exhibits or schedules, as the case may be, of or to this Agreement.

(e) This Agreement may be executed by each party hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

(f) If any term or provision hereof or the application thereof to any circumstances shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or such provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any remaining terms and provisions hereof or the application of such term or provision to circumstances other than those as to which it is held invalid or

unenforceable. To the extent permitted by Applicable Law, the parties hereto hereby waive any provision of law which renders any term or provision hereof invalid or unenforceable in any respect.

(g) All representations, warranties, covenants and agreements made herein and in certificates delivered pursuant hereto shall survive any investigation or inspection made by or on behalf of any of the parties hereto and the sale to and acceptance hereunder of the DBX Lease Equipment by DBX and shall continue in full force and effect until all of the obligations of MBTA under the DBX Lease shall be fully performed in accordance with the terms thereof and until satisfaction and discharge of the obligations contained in the other Cross Border Documents in accordance with their respective terms.

(h) The obligations of MBTA and each APL Tax Indemnatee and Indemnified Person under Sections 8.2 and 8.3 shall survive the expiration or earlier termination of the DBX Lease Term; provided, that nothing in this Section 15(h) shall be deemed to constitute a waiver by any party of any Applicable Law limiting the period during which an action by such APL Tax Indemnatee or Indemnified Person may be commenced. The obligations of MBTA under Sections 8.2 and 8.3 are expressly made for the benefit of, and shall be enforceable by, each APL Tax Indemnatee and Indemnified Person.

(i) No news release, public announcement, advertisement, offering circular, prospectus or other publicity concerning the transactions contemplated, other than the disclosures contained in the Preliminary Official Statement, dated December 7, 1988, and the Official Statement, dated December 14, 1988 relating to the Certificates, in the Cross Border Documents shall be made by any party hereto without first obtaining the prior written consent of MBTA, DBX, NEMLC and the ETA Trustee, which consent shall not be unreasonably withheld; provided, however, that any party may disclose any such information (i) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal regulatory body of the United States or the Federal Republic of Germany having or claiming to have jurisdiction over such party, (ii) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation, (iii) in order to comply with any law, order, regulation or ruling, (iv) to any prospective transferee in connection with any contemplated transfer permitted by Section 12 hereof and (v), in the case of MBTA, in any meetings of the Board or the Advisory Board.

(j) Each of the parties hereto represents to each other of them that it has not engaged any broker or other representative in connection with the sale or placement of any of the interests created under the Cross Border Documents and each of them shall indemnify and hold harmless each other of them from and against any claim, damage or expense arising out of the breach by it of the foregoing representation.

ICC FILING

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed, as a document under seal, as of the day and year first above written.

Approved as to Form for
Massachusetts Bay
Transportation Authority

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

By Jane F. Daly
Name: Jane F. Daly
Title: Dep. G.M.

DB EXPORT-LEASING GmbH

By H. Frankel
Name: H. Frankel
Title: Attn in Port

By / / / / /
Name:
Title:

NEMLC LEASING CORPORATION

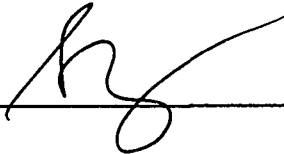
By _____
Name:
Title:

THE CONNECTICUT NATIONAL BANK,
in its individual capacity as
herein provided and as ETA
Trustee

By [Signature]
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed, as a document under seal, as of the day and year first above written.

Approved as to Form for
Massachusetts Bay
Transportation Authority

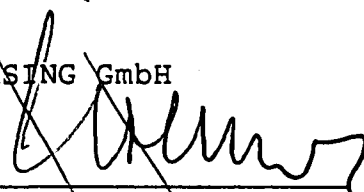


MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

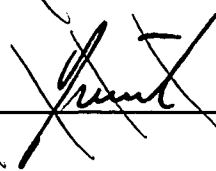
By 

Name:
Title:

DB EXPORT-LEASING GmbH

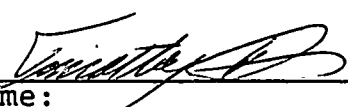
By 

Name:
Title:

By 


Name:
Title:

NEMLC LEASING CORPORATION

By 

Name:
Title:

THE CONNECTICUT NATIONAL BANK,
in its individual capacity as
herein provided and as ETA
Trustee

By 

Authorized Officer

State of New York

ss:

County of New York

On this 22nd day of December, 1988 before me personally appeared, Jane Daly, to me personally known, who being by me duly sworn, says that she is the Deputy General Manager of the Massachusetts Bay Transportation Authority, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Ellen Extract
Signature of Notary Public

ELLEN EXTRACT
NOTARY PUBLIC, State of New York
No. 31-4849429
Qualified in New York County
Commission Expires March 30, 1989

State of New York

ss:

County of New York

On this 22nd day of December, 1988 before me personally appeared, H. Franklin Bloomer, Esquire, to me personally known, who being by me duly sworn, says that he is the attorney-in-fact of DB Export-Leasing GmbH, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Ellen Extract

Signature of notary public

ELLEN EXTRACT
NOTARY PUBLIC, State of New York
No. 31-4849429
Qualified in New York County
Commission Expires March 30, 1989

State of New York

ss:

County of New York

On this 21st day of December, 1988 before me personally appeared, Bryan R. Calder, to me personally known, who being by me duly sworn, says that he is the Vice President of The Connecticut National Bank, in its individual capacity as herein provided and as ETA Trustee, that the seal affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

[Seal]



Signature of notary public

ELLEN EXTRACT
NOTARY PUBLIC, State of New York
No. 31-4849429
Qualified in New York County
Commission Expires March 30, 1989

1cc Filing

State of New York

ss:

County of New York

On this 15th day of December, 1988 before me personally appeared, Wa Phynn, to me personally known, who being by me duly sworn, says that (s)he is the Gen'l Counsel of Mon. Be Transp. Auth., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Janet A. Lacey
Signature of Notary Public

JANET A. LACEY
Notary Public, State of New York
No. 24-4799179
Qualified in Kings County
Commission Expires March 30, 1989

7/31

State of Massachusetts

SS:

County of

On this 21st day of December, 1988 before me personally appeared, Timothy Dee, to me personally known, who being by me duly sworn, says that he is the duly authorized designee of NEMLC Leasing Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Signature of notary public *Susan G. Orr*

My commission expires Expires April 22, 1994

Schedule 1
to Agreement to
Purchase and Lease

PAYMENTS TO BE MADE AT CLOSING

1. Accounts Receivable Purchase Agreement

Payment of Receivable Purchase Price by NEMLC to DBX.**	\$27,622,275
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2. DBX Purchase Agreement

DBX Purchase Price payable to the MBTA by DBX for the DBX Lease Equipment	\$30,455,899
--	--------------

Payable by:

(a) Wire transfer*	\$2,833,624	
(b) Book entries**	27,622,275	\$30,455,899

3. Security Deposit Agreement

Payment of Security Deposit by the MBTA to NEMLC**	\$27,622,275
---	--------------

*All payments to be made to the MBTA should be made by wire transfer to the bank and account number of the MBTA specified in Schedule 2 hereto.

**To be paid by means of off-setting debits and credits in the respective books of NEMLC, DBX and MBTA.

Schedule 2
to Agreement to
Purchase and Lease

PAYMENT INSTRUCTIONS

All payments to be made to MBTA shall be made by wire
transfer to:

Bank of New England, N.A.
28 State Street
Boston, Massachusetts 02109

for the Account Number 1811-0353 of Massachusetts Bay
Transportation Authority - II.

MICR No.: 011 000 13-8

All payments to be made to DBX shall be made by wire
transfer to:

Deutsche Bank A.G.
Frankfurt am Main 1
Federal Republic of Germany

Bank routing number BLZ 50070010

for the Account Number 9619198
of DB Export-Leasing GmbH
(via Deutsche Bank AG, New York Branch,
New York)

with telephone advice to
Ingo Doescher
Telephone 011-49-69-7150-3252
With reference to "MBTA-II"

All payments to be made to NEMLC shall be made by wire
transfer to:

Bank of New England, N.A.
28 State Street
Boston, Massachusetts 02109

for the Account Number 2010-4881 of NEMLC Leasing Corp.

DBX Purchase Agreement

Schedule 3
to Agreement to
Purchase and Lease

List of Items of DBX Lease Equipment

<u>Item No.</u>	<u>Manufacturer's Identification No.</u>	<u>Unit Type</u>
517	02-142	Blind Trailer
518	02-143	Blind Trailer
519	02-144	Blind Trailer
520	02-145	Blind Trailer
521	02-146	Blind Trailer
522	02-147	Blind Trailer
523	02-148	Blind Trailer
524	02-149	Blind Trailer
525	02-150	Blind Trailer
526	02-151	Blind Trailer
527	02-152	Blind Trailer
528	02-153	Blind Trailer
529	02-154	Blind Trailer
530	02-155	Blind Trailer
531	02-156	Blind Trailer
1517	02-125	Control Coach
1518	02-126	Control Coach
1519	02-127	Control Coach
1520	02-128	Control Coach
1521	02-129	Control Coach
1522	02-130	Control Coach
1523	02-131	Control Coach
1524	02-132	Control Coach
1525	02-133	Control Coach
1526	02-134	Control Coach
1527	02-135	Control Coach
1528	02-136	Control Coach
1529	02-137	Control Coach
1530	02-138	Control Coach
1531	02-139	Control Coach

SCHEDULE X

Schedule X is an attachment to, and a part of, each of the following agreements:

Municipal Lease
Municipal Sublease
Equipment Trust Agreement
DBX Purchase Agreement
DBX Lease

SCHEDULE X

The following terms shall have the respective meanings set forth below:

"Acceptance Certificate" means an Acceptance Certificate substantially in the form of Exhibit A to the DBX Lease, delivered pursuant to Section 2.3 of the DBX Lease.

"Accounts" means any accounts or subaccounts of any Fund.

"Accounts Receivable" shall have the meaning specified in Section 2.1 of the Accounts Receivable Purchase Agreement.

"Accounts Receivable Purchase Agreement" means the Accounts Receivable Purchase Agreement, dated as of December 10, 1988, between DBX, as seller, and NEMLC, as purchaser, as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"Act" means Chapter 161A of the General Laws of the Commonwealth, as amended.

"Actual Knowledge" means (a) with respect to MBTA, actual knowledge of its Chairman, General Manager, Treasurer-Controller or Director of Railroad Operations, (b) with respect to DBX, actual knowledge of any General Manager, (c) with respect to NEMLC, actual knowledge of the President or any Vice President, Secretary or Treasurer and (d) with respect to the ETA Trustee, actual knowledge of an Authorized Officer of the Trustee. "Actual Knowledge" shall be deemed to exist following receipt of written notice of a fact, event, condition or other circumstance by any such Person.

"Additional Equipment" means the Items of DBX Lease Equipment which are not also Items of Equipment.

"Additions" has the meaning, with respect to any Item of Equipment, as specified in Article VI of the Municipal Sublease and, with respect to any Item of DBX Lease Equipment, as specified in Article 6 of the DBX Lease.

"Administrative Expenses" means the reasonable fees and expenses of the Trustee, including legal fees and expenses incurred in connection with the issuance of the Certificates and the administration thereof and of the Equipment Trust Agreement.

"Advance Rental Cost" means \$27,622,275.

"Advisory Board" means the public body composed of representatives of each of the 78 cities and towns comprising MBTA as established by Section 7 of the Act.

"Affiliate", means, when used with reference to a specified Person, (i) any Person that directly or indirectly controls or is controlled by or is under common control with the specified Person; (ii) any Person which is an officer, director, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, director, partner or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person which, directly or indirectly, is the beneficial owner of 10 percent or more of any class of voting securities of, or otherwise has a substantial beneficial interest in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10 percent or more of any class of voting securities or in which the specified Person has a substantial beneficial interest and (iv) any relative or spouse of the specified Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis," "after-tax basis," or similar term, means, when used with respect to the payment of any amount and a requirement or contemplation that a gross amount paid shall produce a net amount received and retained by the recipient after payment or proper provision for Taxes and any other taxes imposed on the disbursement or receipt of such gross amount, that gross amount which, after deduction of all Taxes and any other taxes imposed by any jurisdiction or other taxing authority upon or measured by, or otherwise resulting from, the disbursement or receipt of such gross amount or any part thereof, will provide such net amount to the recipient, free of all Taxes and taxes.

"APL Tax Indemnatee" means NEMLC (but only in its capacities under the Cross Border Documents) and DBX, and their respective successors, assigns, agents and employees.

"Applicable Law" means all applicable laws, treaties, judgments, decrees, injunctions, writs and other orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any Governmental Authority and, with respect to the DBX Lease Equipment, shall include the rules in effect from time to time of the American Association of Railroads.

"Appraiser" means Arthur D. Little Valuation, Inc., or such other firm of independent appraisers as is acceptable to MBTA, DBX and NEMLC.

"Appropriation" means, with respect to any Fiscal Period, (i) the approval by the Advisory Board, in accordance with Section 5(i) of the Act, of an itemized budget of the MBTA in which all Rental Payments becoming due in the Fiscal Period are shown as current expense, (ii) failure of the Advisory Board to reduce the line item of the budget in which rental payments are shown as submitted to it by the MBTA for such Fiscal Period by an amount equal to such Rental Payments, and (iii) failure of the Advisory Board to determine, as evidenced in its official records of its deliberations with respect to the approval of such budget, that such Rental Payments shall not be included as current expense in the MBTA's budget for such Fiscal Period.

"Authorized Investments" means (a) readily marketable obligations of, or fully and unconditionally guaranteed (as to both principal and interest) by, the United States of America and having a maturity not in excess of one Business Day from the date of acquisition thereof; (b) certificates of deposit (having a maturity not in excess of 30 days from the date of acquisition thereof) evidencing direct obligations of any commercial bank or trust company organized in the United States of America and having capital, surplus and undivided profits of at least \$1,000,000,000 and (c) so-called money market funds, banker's acceptances or similar obligations (having a maturity not in excess of 30 days) issued by NEMLC.

"Authorized Officer of MBTA" or "Authorized Officer of the Sublessee" means the Treasurer/Controller of MBTA or such other officer or person designated in writing by MBTA to the ETA Trustee to deal with matters governed by the Municipal Documents or the Cross Border Documents.

"Authorized Officer of the Trustee" means any officer of CNB in its principal corporate trust office or any other officer or person designated in writing by CNB to MBTA, NEMLC and DBX to deal with matters governed by the Municipal Documents or the Cross Border Documents.

"Base Rate" means the interest rate per annum announced and made effective from time to time by NEMLC at its principal office in Boston, Massachusetts, as the prime rate or, as the case may be, the base, reference or other similar rate then designated by it for general commercial lending reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, which serves as the basis upon which effective rates of interest are calculated for obligations making reference thereto.

"Basic Rent" means the rent payable for the DBX Lease Equipment pursuant to and as defined in Section 8.1 of the DBX Lease.

"Basic Rent Payment Date" means (i) each December 31 and June 30 during the DBX Lease Term commencing with December 31, 1988 through and including June 30, 2006 and (ii) December 22, 2006.

"Beneficial Owner" means the person or entity that is considered to be the beneficial owner of any Certificate pursuant to the arrangements for book entry determination of ownership applicable to DTC.

"BNE" means Bank of New England, N.A., a national banking association, and its successors or assigns.

"Board" means the Board of Directors of MBTA.

"Board Resolution" or "Certified Resolution of MBTA" means a resolution of the Board certified by the Secretary or Assistant Secretary of MBTA to have been duly adopted by the Board and to be in full force and effect on the date of such certification.

"Business Day" means any day other than a Saturday or a Sunday or a day on which commercial banking institutions in the City of Boston, Massachusetts, the City of Hartford, Connecticut or The City of New York, New York or (with reference to any payment to be made to DBX) the City of Frankfurt am Main, Federal Republic of Germany, are authorized by law to be closed. Any reference herein to "days" (unless Business Days are specified) shall mean calendar days.

"Certificate Fund" means the special trust fund of MBTA, created and established under Section 4.1 of the Equipment Trust Agreement and to be held and administered by the Trustee as provided in Section 4.4 of the Equipment Trust Agreement.

"Certificate Register" means the books of the Trustee kept in the principal corporate trust office thereof for the registration, exchange and transfer of Certificates as further described in Section 2.4 of the Equipment Trust Agreement.

"Certificate" or "Certificates of Participation" means the Certificates of Participation prepared and delivered by the ETA Trustee pursuant to the Equipment Trust Agreement.

"Claims" means liabilities, obligations, losses, damages, penalties, claims (including without limitation claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, expenses and disbursements (including without limitation reasonable legal fees and expenses) of any kind and nature whatsoever without any limitation as to amount.

"Closing" shall have the meaning specified in Section 2 of the DBX Purchase Agreement.

"Closing Date" means December 22, 1988 or such other date as shall be acceptable to each of MBTA, DBX, NEMLC and the ETA Trustee; provided, however, that in no event shall such date be later than December 31, 1988.

"CNB" means The Connecticut National Bank, a national banking association, in its individual capacity.

"Code" means the Internal Revenue Code of 1986, as amended, and with respect to specific Sections thereof, such reference shall be deemed to include the proposed and final regulations promulgated under or applicable to such Sections and any pronouncement of the Internal Revenue Service applicable to such Sections that constitutes an "administrative pronouncement" as that term is described in Treasury Regulations Section 1.6661-3(b)(2).

"Commonwealth" means The Commonwealth of Massachusetts.

"Consent and Agreement of the Manufacturer" means the Consent and Agreement of the Manufacturer, dated December 10, 1988, among the Manufacturer, MBTA and DBX, as such consent and agreement may from time to time be supplemented, amended or modified in accordance with its terms.

"Contract Assistance Provisions" has the meaning specified in Section 5.5 of the Municipal Sublease and Section 8.6 of the DBX Lease.

"Contract for Financial Assistance (DBX Lease)" means the Contract for Financial Assistance, dated December 10, 1988, between MBTA and the Commonwealth, with respect to the transactions contemplated by the Cross Border Documents, as such agreement may from time to time be supplemented, amended or modified in accordance with its terms.

"Contract for Financial Assistance (Municipal Sublease Agreement)" means the Contract for Financial Assistance, dated December 1, 1988, between MBTA and the Commonwealth, with

respect to the transactions contemplated by the Municipal Documents, as such agreement may from time to time be supplemented, amended or modified in accordance with its terms.

"Cost", in connection with the acquisition by the Trustee of a leasehold interest in the Equipment, means all expenses which are properly chargeable thereto under Generally Accepted Accounting Principles, and which are incidental to any financing under the Equipment Trust Agreement, including, without limiting the generality of the foregoing:

- (a) Advance Rental Cost;
- (b) Legal, accounting and other professional and advisory fees; and
- (c) Printing, engraving and other expenses of financing in connection with the issuance of the Certificates, including fees and expenses of the Trustee but not including underwriters' discounts or placement agents' fees or similar compensation.

Whenever Costs are to be paid under the Equipment Trust Agreement, such payment may be made by way of reimbursement to the Trustee or others who have paid the same.

"Cost of Issuance Account" means the account so designated as part of the Equipment Lease Fund and established pursuant to Section 4.1 of the Equipment Trust Agreement.

"Counsel" means any attorney-at-law or law firm satisfactory to the ETA Trustee.

"Cross Border Documents" means the DBX Purchase Agreement, the DBX Lease, the VAT Agreement, the Accounts Receivable Purchase Agreement, the Security Deposit Agreement, the MBB Purchase Agreement, the MBB Purchase Agreement Assignment (DBX), the Contract for Financial Assistance (DBX Lease), the MBTA's Assignment (DBX) and the Full Warranty Bill of Sale.

"Cross Border Transaction" means the sale of the DBX Lease Equipment by MBTA to DBX pursuant to the DBX Purchase Agreement, the lease of the DBX Lease Equipment by DBX to MBTA under the DBX Lease and the transactions contemplated in the DBX Purchase Agreement relating to such sale and leaseback.

"DBCC" means Deutsche Bank Capital Corporation.

"DBX" means DB Export-Leasing GmbH, a company organized and existing under the laws of the Federal Republic of Germany.

"DBX Estate" shall mean all estate, right, title and interest of DBX in and to the DBX Lease Equipment, the DBX Lease, the MBB Purchase Agreement, the MBB Purchase Agreement Assignment, the DBX Purchase Agreement and the MBTA's Assignment including, without limitation, all amounts of Basic Rent, Supplemental Rent, insurance and requisition proceeds (except public liability insurance proceeds), indemnity or other payments of any kind for or with respect to the DBX Lease Equipment.

"DBX Lease" means the Lease Agreement, dated as of December 10, 1988, between DBX, as lessor, and MBTA, as lessee, as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"DBX Lease Default" means an event or condition which with the giving of notice or the passage of time or both would constitute a DBX Lease Event of Default.

"DBX Lease Equipment" means the 33 Messerschmitt-Boelkow-Blohm commuter rail coaches manufactured by the Manufacturer and sold to MBTA pursuant to the MBB Purchase Agreement, the Manufacturer's identification numbers which are specified in Annex 1 to the DBX Lease, together with Parts and any Substitute DBX Lease Equipment.

"DBX Lease Event of Default" shall have the meaning specified in Article 12 of the DBX Lease.

"DBX Lease Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature so long as the same shall be incorporated or installed in or attached to any Item of DBX Lease Equipment or so long as title thereto shall remain vested in DBX in accordance with Section 5.3 of Article 6 of the DBX Lease after removal from such Item prior to the expiration or termination of the DBX Lease.

"DBX Lease Stipulated Loss Value", as of any DBX Lease Stipulated Loss Value Date during the DBX Lease Term, means, with respect to any Item of DBX Lease Equipment, an amount determined by multiplying Lessor's Cost thereof by the percentage specified in Exhibit B to the DBX Lease opposite the DBX Lease Stipulated Loss Value Date with respect to which the amount is determined.

"DBX Lease Stipulated Loss Value Date" means each date set forth on Exhibit B to the DBX Lease.

"DBX Lease Term" means the term of the DBX Lease, as set forth in Section 2.2 of the DBX Lease.

"DBX Power of Sale" means the power of sale granted to the ETA Trustee by DBX in, and exercisable by the ETA Trustee in accordance with, Article 9 of the DBX Purchase Agreement.

"DBX Purchase Agreement" means the Agreement to Purchase and Lease, dated as of December 10, 1988, among MBTA, DBX, NEMLC and CNB, in its individual capacity and as ETA Trustee, as such agreement may from time to time be supplemented, amended or modified in accordance with its terms.

"DBX Purchase Price" means \$30,455,899.

"Designated Payment Date" has the meaning specified in Section 13.1(d) of the DBX Lease.

"Destroyed Equipment" has the meaning specified in Section 10.1(b) of the DBX Lease.

"Dollars" or "\$" means lawful currency of the United States of America.

"DTC" means the Depository Trust Company, New York, New York, and its successor or any replacement securities depository appointed under the Equipment Trust Agreement.

"DTC Participant" means securities brokers or dealers, banks, trust companies, clearing corporations and various other entities, some of which, or their representatives own DTC.

"Eligible Investments" means and includes any of the following investments to the extent the same are then (a) Investment Grade and (b) legal investments for moneys held under the Equipment Trust Agreement under Applicable Law:

- (a) Government Securities;
- (b) Time Deposits;
- (c) Participation units in Massachusetts Municipal Depository Trust, a combined investment fund created pursuant to section thirty-eight A of Chapter twenty-nine of the General Laws of the Commonwealth; and

- (d) any mutual fund the sole assets of which are Government Securities.

"Equipment" means the 30 Messerschmitt-Boelkow-Blohm commuter rail coaches manufactured by the Manufacturer and sold to MBTA pursuant to the MBB Purchase Agreement, the Manufacturer's identification numbers of which are specified in Schedule C to the Municipal Sublease, together with Parts and any Substitute Equipment.

"Equipment Account" means the account so designated as part of the Equipment Lease Fund and established pursuant to Section 4.1 of the Equipment Trust Agreement.

"Equipment Lease Fund" means the special trust fund of MBTA created and established under Section 4.1 of the Equipment Trust Agreement and to be held and administered by the Trustee as provided in Section 4.5 of the Equipment Trust Agreement.

"Equipment Trust Agreement" means the Equipment Trust Agreement, dated as of December 1, 1988, between MBTA and CNB, as such agreement may be from time to time be supplemented, amended as modified in accordance with its terms.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ETA Trustee" or "Trustee" means CNB, in its capacity as trustee pursuant to the Equipment Trust Agreement.

"Event of Loss", with respect to any Item of DBX Lease Equipment, means any of the following events with respect to such Item: (a) the loss of such Item or of the use thereof due to the destruction of, or damage beyond repair to such Item which in the good faith and reasonable opinion of MBTA renders such Item permanently unfit for normal use by MBTA for any reason whatsoever, such determination to be made promptly after the occurrence of such event and to be evidenced by an Officer's Certificate of MBTA delivered to DBX, NEMLC and the ETA Trustee; (b) the loss of the use for 180 consecutive days or more of such Item due to wear or damage which in the good faith and reasonable opinion of MBTA cannot be repaired, such determination to be made promptly after the occurrence of such event and to be evidenced by an Officer's Certificate of MBTA delivered to DBX, NEMLC and the ETA Trustee; (c) any damage to such Item which results in an insurance settlement with respect to such Item on the basis of a total loss or a constructive or compromised total loss; (d) the requisition of title to or the loss of title to such Item; (e)

the confiscation, condemnation or seizure of, or the requisition for use of, such Item which shall have resulted in the loss of possession of such Item for 180 consecutive days or more; or (f) the theft or disappearance of such Item which shall have resulted in the loss of possession of such Item by MBTA for 60 consecutive days or more.

"Event of Nonappropriation" means a failure by MBTA to make full payment of a Rental Payment on a Rental Payment Due Date during a Fiscal Period with respect to which an Appropriation has not occurred.

"Excluded German Taxes" means any taxes imposed by the Federal Republic of Germany on any payment of Rent solely by reason of the Federal Republic of Germany treating such payment as having been made to NEMLC by or on behalf of DBX.

"Excluded Payments" means indemnity payments paid or payable by MBTA to DBX as Rent under the DBX Lease or the DBX Purchase Agreement.

"Fair Market Sales Value" shall have the meaning specified in Section 7.3 of the Municipal Sublease and in Section 13.3 of the DBX Lease.

"Fiscal Period" means the period of time for which funds are periodically budgeted or appropriated to MBTA and during which MBTA may unconditionally dispose of such funds in accordance with its budget.

"Full Warranty Bill of Sale" shall mean the full warranty bill of sale executed by MBTA as owner of the DBX Lease Equipment in favor of DBX.

"Funds" means the Certificate Fund and the Equipment Lease Fund.

"Generally Accepted Accounting Principles" means those accounting principles applicable in the preparation of financial statements, as promulgated from time to time by the Financial Accounting Standards Board or such other body recognized as authoritative by the American Institute of Certified Public Accountants.

"German Purchase Option" means the option to purchase the DBX Lease Equipment granted to MBTA pursuant to Section 16.1 of the DBX Lease.

"Government Approvals" means all authorizations, consents, licenses, approvals, certificates, waivers, exceptions,

orders, variances, filings, recordings and declarations of or with any Governmental Authority.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Government Securities" means direct obligations of, or obligations unconditionally guaranteed by, the United States of America.

"Indemnified Persons" means DBX, NEMLC and their respective successors, assigns, agents, partners and the servants and employees of each thereof.

"Independent" means, with respect to a certified public accountant, a Person (a) who is not an officer or employee of MBTA and (b) which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is an officer or employee of MBTA; provided, however, the fact that such Person is retained regularly by or transacts business with MBTA shall not make such Person an employee within the meaning of this definition.

"Item" or "Item of" or "Item thereof" means each commuter rail coach comprising a part of the Equipment, the Additional Equipment or the DBX Lease Equipment, as the case may be.

"Interest Payment Date" means each July 15 and January 15, commencing on July 15, 1989.

"Investment Grade" means those obligations which are rated A1 or higher by Moody's and AA or higher by S&P. If either Moody's or S&P shall for any reason no longer perform the functions of a securities rating agency, "Moody's" or "S&P", as the case may be, shall be deemed to refer to any other nationally recognized rating agency designated by MBTA and satisfactory to DBX and in such event the rating by such agency shall be equivalent to A1 or higher by Moody's or AA or higher by S&P.

"Lessee" means (i) as used in the Municipal Lease, the ETA Trustee, and (ii) as used in the DBX Lease, MBTA.

"Lessor" means (i) as used in the Municipal Lease, MBTA, and (ii) as used in the DBX Lease, DBX.

"Lessor Lien" or "Lessor Liens" means any Lien or disposition of title which results from a claim against or act of, or failure to act by, DBX or CNB that is not a claim against or act of MBTA and either (a) results from claims against DBX or CNB not related to the Municipal Transaction or the Cross Border Transaction, (b) results from an affirmative act of DBX or CNB which is neither required or permitted to be taken by DBX or CNB, as the case may be, pursuant to a provision of any Operative Document nor consented to by MBTA nor taken as a result of the occurrence and continuance of a Municipal Sublease Event of Default as permitted under the Municipal Sublease or a DBX Lease Event of Default as permitted under the DBX Lease, or (c) results from nonpayment by DBX or CNB of any taxes imposed on such Person or the consolidated group of taxpayers of which such Person is a part which MBTA is not required to indemnify against pursuant to any of the Operative Documents or is so required and has made such indemnification payment.

"Lessor's Cost", as of any date means, with respect to any Item of DBX Lease Equipment, the amount listed opposite the Lessee Identification Number therefor in Annex 1 to the DBX Lease under the heading "Lessor's Cost."

"Lien" means any mortgage, pledge, lien, charge, encumbrance, security interest or lease in the nature thereof (including any conditional sale agreement, equipment trust agreement or other title retention agreement) or the filing of, or agreement to give, any financing statement under the Applicable Law of any jurisdiction.

"Manufacturer" means Messerschmitt-Boelkow-Blohm GmbH, a company organized and existing under the laws of the Federal Republic of Germany, and its successors and assigns.

"MBB Purchase Agreement" means the Agreement, dated August 7, 1985, between the Manufacturer and MBTA, as amended, modified and supplemented on or prior to the Closing Date, providing, among other things, for the manufacture by the Manufacturer and sale to MBTA of the DBX Lease Equipment, as such Agreement may thereafter from time to time be amended, modified or supplemented in accordance with the applicable provisions thereof and of the MBB Purchase Agreement Assignment.

"MBB Purchase Agreement Assignment (DBX)" means the Purchase Agreement Assignment, dated as of the Closing Date, between MBTA and DBX (together with the Consent and Agreement of the Manufacturer attached thereto), assigning to DBX certain of MBTA's right, title, and interest in, to and under the MBB Purchase Agreement with respect to the DBX Lease Equipment, as such MBB Purchase Agreement Assignment (DBX) may from time to

time be supplemented, amended or modified to the extent permitted by and in accordance with the terms thereof and of the DBX Purchase Agreement.

"MBB Purchase Agreement Assignment (ETA)" means the Purchase Agreement Assignment, dated as of the Closing Date, between MBTA and the ETA Trustee (together with the Consent and Agreement of the Manufacturer attached thereto), assigning to the ETA Trustee certain of MBTA's right, title, and interest in, to and under the MBB Purchase Agreement with respect to the Equipment, as such MBB Purchase Agreement Assignment (ETA) may from time to time be supplemented, amended or modified to the extent permitted by and in accordance with the terms thereof and of the Equipment Trust Agreement.

"MBTA" means Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth, and its successors and, to the extent permitted by the DBX Lease and the Municipal Sublease, assigns.

"MBTA Power of Sale" means the power of sale granted to the ETA Trustee by MBTA in, and exercisable by the ETA Trustee in accordance with, Article XI of the Equipment Trust Agreement.

"MBTA's Assignment (DBX)" means the Assignment, dated as of the Closing Date, by MBTA in favor of DBX, as such Assignment may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"MBTA's Assignment (ETA)" means the Assignment, dated as of the Closing Date, by MBTA in favor of the ETA Trustee, as such assignment may from time to time be amended, modified or supplemented in accordance with the terms thereof."

"MBTA's Investment Instructions" means the written investment instructions delivered to the MBTA by Special Counsel, as amended or superceded from time to time.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of MBTA.

"Municipal Documents" means the Equipment Trust Agreement, the Municipal Lease, the Municipal Sublease, the Contract for Financial Assistance (Municipal Sublease Agreement), the MBB Purchase Agreement, the MBB Purchase Agreement Assignment (ETA) and the MBTA's Assignment (ETA).

"Municipal Lease" means the Lease Agreement, dated as of December 1, 1988, between MBTA, as lessor, and the ETA Trustee, as lessee, as such agreement may from time to time be amended, modified or supplemented in accordance with the applicable provisions thereof.

"Municipal Lease Term" means the term of the Municipal Lease, as set forth in Article IV of the Municipal Lease.

"Municipal Sublease" means the Sublease Agreement, dated as of December 1, 1988, between the ETA Trustee, as sublessor, and MBTA, as sublessee, as such agreement may from time to time be amended, modified or supplemented in accordance with the applicable provisions thereof.

"Municipal Sublease Default" means an event or condition which, with the giving of notice or lapse of time or both, would constitute a Municipal Sublease Event of Default.

"Municipal Sublease Event of Default" shall have the meaning specified in Section 11.1 of the Municipal Sublease.

"Municipal Sublease Stipulated Loss Value" as of any Municipal Sublease Stipulated Loss Value Date during the Municipal Sublease Term means, with respect to any Item of Equipment, an amount determined by multiplying the Sublessor's Cost thereof by the percentage specified in Schedule A to the Municipal Sublease opposite the Municipal Sublease Stipulated Loss Value Date with respect to which the amount is determined.

"Municipal Sublease Stipulated Loss Value Date" means each date set forth on Schedule A to the Municipal Sublease.

"Municipal Sublease Term" means the term of the Municipal Sublease, as set forth in Section 3.1 of the Municipal Sublease.

"Municipal Transaction" means the manufacture, purchase, ownership, financing, leasing, operation, maintenance, storage, return and disposition of the Equipment as described and contemplated by the Municipal Documents.

"NEMLC" means NEMLC Leasing Corporation, a Massachusetts corporation.

"Obsolete Parts" has the meaning specified in Section 6.4 of the Municipal Sublease and Article 6 of the DBX Lease.

"Officer's Certificate" means (a) with respect to MBTA, a certificate executed on behalf of MBTA by its duly authorized Chairman, General Manager, Treasurer-Controller or General Counsel (or by any duly authorized person holding any such office in an "Acting" capacity), signing alone; (b) with respect to NEMLC, a certificate executed on behalf of NEMLC by the duly authorized President or any Vice President, Treasurer or Secretary (whether or not any such title is preceded by any modifier such as Assistant), signing alone; (c) with respect to DBX, a certificate executed on behalf of DBX by any two of its duly authorized General Managers; and (d) with respect to the ETA Trustee, a certificate executed on behalf of the ETA Trustee by an Authorized Officer of the Trustee.

"Operative Documents" means the Equipment Trust Agreement, the Municipal Lease, the Municipal Sublease, the DBX Purchase Agreement, the DBX Lease, the Contract for Financial Assistance, the MBB Purchase Agreement, the MBB Purchase Agreement Assignment, MBTA's Assignment, the VAT Agreement, the Accounts Receivable Purchase Agreement, the Security Deposit Agreement and the Full Warranty Bill of Sale.

"Original Issue Date" means the Closing Date.

"Outstanding" in connection with the Certificates means, as of the time in question, all Certificates executed and delivered under the Equipment Trust Agreement, except:

- (a) Certificates theretofore cancelled or required to be cancelled thereunder;
- (b) Certificates for which the payment or redemption of which the necessary amount shall have been or shall concurrently be deposited with the Trustee; provided, that if such Certificates are being redeemed prior to maturity, the required notice of redemption shall have been given or provisions satisfactory to the Trustee shall have been made therefor; and
- (c) Certificates in substitution for which other Certificates have been executed and delivered

pursuant to Article II of the Equipment Trust Agreement.

In determining whether the Owners of a requisite aggregate principal amount of Certificates Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Equipment Trust Agreement, unless all Certificates Outstanding are so held, Certificates which are owned by or on behalf of MBTA or any person controlling, controlled by or under common control with MBTA shall be disregarded for the purpose of any such determination.

"Overdue Interest Rate" means the Base Rate plus 3% per annum.

"Owner" or "Certificate Owner" means the registered owner of a Certificate.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature so long as the same shall be incorporated or installed in or attached to any Item of Equipment or so long as the ETA Trustee retains a leasehold interest therein in accordance with Section 6.3 or 6.4 of the Municipal Sublease after removal from such Item prior to the expiration or termination of the Municipal Sublease.

"Permitted Liens" means (a) the rights of the ETA Trustee in and to the Equipment pursuant to the Equipment Trust Agreement, the DBX Purchase Agreement, the Municipal Lease and the Municipal Sublease, the rights of NEMLC under the Accounts Receivable Purchase Agreement, the rights of DBX under the DBX Purchase Agreement, the DBX Lease, the MBB Purchase Agreement Assignment and MBTA's Assignment, (b) the subordinate rights of others under agreements or arrangements to the extent expressly permitted by the terms of Sections 4.2 of the DBX Lease and Section 10.1 of the Municipal Sublease, (c) Lessor Liens, (d) Liens for taxes, assessments, charges or other governmental levies either not yet due or being contested in good faith by appropriate proceedings promptly initiated and diligently prosecuted, but only so long as (i) such proceedings do not involve any material danger of the sale, forfeiture or loss of any Item of DBX Lease Equipment, or any interest therein, and (ii) adequate reserves are maintained in accordance with applicable accounting principles with respect to such Liens, (e) materialmen's, mechanics', carriers', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business for amounts the payment of which is not overdue for a period in excess of 30 days or are being contested in good faith by appropriate proceedings promptly initiated and diligently

prosecuted but only so long as (i) such proceedings do not involve any danger of the sale, forfeiture or loss of any such Item, or any interest therein and (ii) adequate reserves are maintained in accordance with applicable accounting principles with respect to such Liens, and (f) Liens arising out of judgments or awards against MBTA with respect to which an appeal or proceeding for review is being diligently prosecuted in good faith and with respect to which a stay of execution shall have been secured or an appeal bond shall have been filed pending such appeal or proceeding for review but only so long as (i) such proceedings do not involve any danger of the sale, forfeiture or loss of any such Item, or any interest therein, and (ii) adequate reserves are maintained in accordance with applicable accounting principles with respect to such judgments or awards.

"Person" means an individual, a corporation, a partnership, an unincorporated organization, an association, a joint stock company, a joint venture, a trust, an estate, a government or any agency or political subdivision thereof or any other entity.

"Principal Payment Date" means each January 15, commencing January 15, 1990.

"Purchase Contract" means the Purchase Contract, dated December 14, 1988, between MBTA and DBCC and BNE relating to the purchase by DBCC and BNE of the Certificates.

"Rebate Instructions" means written instructions delivered to MBTA by Special Counsel for compliance with section 148(f) of the Code and Treasury Regulations effective or proposed thereunder (the "Rebate Rules"), compliance with which, in the opinion of Special Counsel, is necessary to and will result in compliance with the Rebate Rules.

"Receivable Purchase Price" means \$27,622,275 as specified in Section 3.1 of the Accounts Receivable Purchase Agreement.

"Record Date" means with respect to each Interest Payment Date, the first day of the calendar month during which such Interest Payment Date occurs.

"Redemption Date" means the date specified by the Trustee in a redemption notice to Certificate Owners as the date on which one or more Certificates will be redeemed.

"Rent" means Basic Rent and Supplemental Rent.

"Rental Payment Due Date" means each January 15 and July 15 during the Municipal Sublease Term commencing July 15, 1989.

"Rental Payments" means the amounts payable by MBTA as rent for the use of the Equipment pursuant to Section 4.2 of the Municipal Sublease.

"Request" means a Request for Certificates submitted by MBTA to the Trustee pursuant to Section 2.1(a) of the Equipment Trust Agreement.

"Responsible Officer", when used with respect to the ETA Trustee, means an officer of CNB in its principal corporate trust office and also means, with respect to a particular corporate trust matter, any other officer of CNB to whom such matter is referred because of his knowledge of and familiarity with the particular subject and, when used with respect to any of DBX, NEMLC or MBTA, means any corporate officer or other employee or a party who, in the normal performance of his operational responsibilities, with respect to the subject matter of any covenant, agreement or obligation of any such party pursuant to any Operative Document, would have knowledge of such matter and the requirements of any Operative Document with respect thereto.

"S&P" means Standard & Poor's Corporation, a New York corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of MBTA.

"Schedule of Approved Issuance Costs" means the Schedule described in Section 4.5(b) of the Equipment Trust Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Deposit" means the deposit required to be made by MBTA pursuant to and as specified in Section 2.1 of the Security Deposit Agreement.

"Security Deposit Agreement" means the Security Deposit Agreement, dated as of December 10, 1988, between MBTA and NEMLC, as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"Special Counsel" means Dewey, Ballantine, Bushby, Palmer & Wood, or any successor thereto, or, if there be no successor, Counsel.

"Special Payment Date" means, with respect to Outstanding Certificates, the date set for payment of amounts due on Certificates that were not paid when due on any Principal Payment Date or Interest Payment Date, which date shall be fixed by the Trustee whenever moneys become available for the payment of such amounts.

"Special Record Date" means the date which is 15 days immediately preceding any Special Payment Date.

"Sublessee", as used in the Municipal Sublease, means MBTA.

"Sublessor", as used in the Municipal Sublease, means the ETA Trustee.

"Sublessor's Cost" as of any date means, with respect to any Item of Equipment, the amount listed opposite the Sublessee Identification Number therefor in Schedule C to the Municipal Sublease under the heading "Sublessor's Cost".

"Substitute Equipment" has the meaning specified in Section 7.3 of the Municipal Sublease.

"Substitute DBX Lease Equipment" has the meaning specified in Section 10.2 of the DBX Lease.

"Supplemental Rent" means any and all amounts, liabilities and obligations (other than Basic Rent) which MBTA assumes or agrees to pay to or as directed by DBX and NEMLC under any of the Operative Documents, including, without limitation, DBX Lease Stipulated Loss Value and interest (including any payments at the Overdue Interest Rate), payments pursuant to the Accounts Receivable Purchase Agreement and damages for breach of any covenants, representations, warranties, indemnities or agreements contained in any such Operative Document.

"Tax" means any and all fees (including, without limitation, documentation, license, recording, filing and registration fees), taxes (including, without limitation, income, franchise, gross receipts, value added, turnover, sales, use, property (tangible and intangible), stamp and excise taxes), levies, assessments, imposts, duties, charges or withholdings of any nature whatsoever, as now or hereafter existing, imposed by any jurisdiction or taxing authority or other Governmental Authority, including, without limitation, the United States of

America, the Commonwealth, the Federal Republic of Germany and any political subdivision or taxing authority or other Government Authority thereof at any time existing, together with any and all penalties, fines, additions to tax and interest thereon.

"Tax Laws" means, with reference to any date or any period, (i) all United States Federal tax statutes, including, without limitation, (A) the Code, and (B) all other Federal tax statutes, such as but not limited to Revenue Acts and also including any Federal tax provisions included in any Public Law or other Federal statute, that are in force and effect with respect to such date or period; and (ii) all rules and regulations, including, without limitation, Treasury regulations, whether legislative regulations, statutorily authorized implementing regulations, interpretive rules and regulations, or procedural rules and regulations, that are at any time promulgated and in force and effect with respect to such date or period under a Federal tax statute that is in force and effect and applicable to such date or period, and includes, without limitation, revenue rulings or similar authority that may be cited as precedent.

"Time Deposits" means and includes negotiable or non-negotiable certificates of deposit or time deposits issued by any national bank, savings bank, banking company or trust company (including the Trustee and any banks affiliated with the Trustee), provided such issuing institution has long-term obligations rated at least A3 from Moody's or at least A- from S&P.

"Transfer" means the transfer of all right, title and interest of DBX in the property being transferred, free and clear of any Lessor Liens attributable to it, but otherwise without recourse, representation or warranty whatsoever, express or implied, except as to the nonexistence of any Lessor Liens attributable to it, which warranty shall be repeated at the time of such transfer and shall survive such transfer.

"Trust Estate" means all rights and property held by the ETA Trustee pursuant to the Equipment Trust Agreement, the Municipal Lease, the Municipal Sublease and the DBX Purchase Agreement including, without limitation, all property held in any of the Funds established under the Equipment Trust Agreement.

"Trustee Investment Instructions" means the written investment instructions delivered to the Trustee by an Authorized Officer of MBTA on or prior to the Closing Date, as amended or superseded from time to time.

"VAT Agreement" means the VAT Agreement, dated as of December 10, 1988, between MBTA and DBX relating to German value added tax, as such VAT Agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.